

State of the Proceſs,

Messrs. BROUGH and WADE,



AGAINST

GEORGE THOMSON.

IN the Action intended and depending before the Lords of Council, at the Instance of Messrs. *Brough* and *Wade* Merchants in *London*, against *George Thomson* Merchant in *Falkirk*, the Libel sets forth, that the said *George Thomson* did, upon the 21st Day of *July* 1753, commission from the Pursuers, and the Pursuers did sell and send to him, a Parcel of Merchant Goods, the Price whereof amounts to 64 *l.* 17 *s.* 7 *d.* *Sterling*, conform to the Accompt libelled on, and concludes, that the Defender ought and should be decreed and ordained by Decreet of the said Lords, to make Payment to the said Pursuers, of the said Sum, and of 50 *l.* *Sterling*, in name of Damages and Expences of Proceſs.

At calling of which Action upon the 31st *January* 1755, in Presence of the Lord *Auchinleck*, the Pursuers Procurator repeated his Libel, being for Payment of 64 *l.* 17 *s.* 7 *d.* *Sterling*, the Amount of the particular Goods contained in the Accompt produced and libelled on, craved Decreet.

Upon which the Defender's Procurator repeated his Defence, that the Defender could never be liable in Payment of the Parcel of Goods libelled, in respect the same never was delivered or came to the Defender's Possession; the Fact being, that although the Pursuers had got Orders from the Defender, desiring such a Parcel of Goods to be shipped for him in the first *Borrowstounness* Ship from *London*; yet, contrary to these Orders, they had thought proper to send the Parcel in a Ship to *Leith*; and when they forwarded the Defender the Invoice, they neither acquainted him so much, or mention the Ship they

they were sent by, nor sent any Bill of Loading; by which Means, the Defender, notwithstanding he was at great Pains and Expence in making Enquiry after the said Parcel, was never able to recover the same, as appeared from the Correspondence of Letters given in; and therefore contended the Defender cannot be liable for the Price of that Article, and ought to be assailed.

To which the Pursuers Procurator answered, That they had, in consequence of the Defender's Commission, shipped and sent down to him, the Parcel of Goods mentioned in the Libel; and there happening to be no *Borrowstounness* Ships in the *Thames* at that Time, and the Defender anxious to have the Goods, they did what was equivalent, that is, send the Parcel in a Ship to *Leith*, directed for the Defender, and the Ship-master actually delivered out the Parcel to *William Brough* at *Leith*, and whether the same was forwarded, or how it came about that the said Parcel was not delivered the Defender, they the Pursuers cannot account for, nor do they imagine that they are obliged to do it, and produced the Correspondence of Letters relative to the said Parcel; which being considered by the said Lord Ordinary, he allowed the Procurators for both Parties to see the Letters produced by either of them, and ordained them to debate in the Cause against the next Calling; of which Letters of Correspondence the following Excerpts contain what relates to the Question.

Letter by the
Defender to
the Pursuers.
13th June
1753.

Gentlemen,——Above three Weeks I sent a Letter to my Son *Richard* at *London*, by an Acquaintance going up by Sea, and inclosed one to be delivered by him to you; but as I have got no Answer from any of you, makes me think it is not come to hand. [Follows a Commission for certain Goods, and then these Words:] As I want the Velvets immediately, I desire you will not fail to send the above with the very first Ship that comes off for *Borrowstounness*, directed to me, to the Care of Mr. *Charles Addison* Merchant in *Borrowstounness*, and write immediately on their being shipped, and place same to Accompt of him who is, &c.

Do. to do.
29th June
1753.

BE sure to send the Velvets with the first Ship that comes for *Borrowstounness*; and if Mr. *Falconer*, who is just now at *London*, is ready to come off, I would rather have them with him, as any

any; but if he is not to come off soon, send them with the very first that comes to *Borrowstounness*, as I expect a Demand for them every Day.

The Pursuers Letter to the Defender, subjoined to the Invoice, is thus :

A Greeable to your Favours, have sent you as above, which we ^{21st July} with safe to Hand, and your Satisfaction: Could not possibly ^{1753.} send them sooner, as have been disappointed by the Workmen who made the low-priced Black Velvet: You mentioned to have 3 Yards Velvet to a Pattern, but there was none inclosed in your Letter. The Shalloons was dyed for you upon Receipt of your first Favour, and hope they will answer, so as to expect your further Commands. The second Blue Velvets is somewhat longer than your Order, but you mentioned that you could often dispense with whole Pieces. We never send any one Goods upon Hazard of having them or Part of them returned, as we always take particular Care in sending the best, and at the lowest Prices. There is no Silk, Genoa Velvet, made under the Price of that sent you, that would answer your Purpose; and you may assure yourself we shall always do the utmost of our Endeavour to serve you in any Thing that is in our Power, &c.

Y Our Favour, covering Invoice ^{21st July} last, came to hand in <sup>Letter, De-
fender to the
Pursuers. 10.
September
1753.</sup> Course of the Post, advising you had then sent the Goods a-
greeable to my Favours; but you do not mention the Ship you sent
them with. I asked at Mr. *Duncan* Air Ship-master at *Borrowstounness*,
who was on the Birth at *London* the Time you mention, and brought
me some Goods from others, if he had a Box from you to me; he
told me he had not. I then expected it with Mr. *Falconer*; and so
soon as I heard he was come to *Borrowstounness*, sent for it; he also
said he had it not. I wrote to *Leith* to see if it had come there, but
no Word of it, which occasions me, by this desiring you'll advise me
by Course of first Post, who you sent it with, that I may see to find
it out. Your being so long of sending it, has made me lose selling
several Palls, which is not only losing the Sale of Velvet, but also
of the Fringes and other Furniture; and there is several Parishes who
bespoke their Palls from me, before I wrote you at first, is still wait-
ing, as I told them I expected it with the first Ship; and if it comes

not

not soon, I will lose them also, which is not a small Disappointment. You should write me the Name of the Ship; as you sent no Receipt, there must be some Mistake, otherways it would have come to hand long before now; so you will please enquire after it, and write me without Loss of Time.

Brough and
Wade Pursu-
ers. to George
Thomson De-
fender. 9th
Sept. 1753.

SIR, Your Favours received Yesterday give us much Surprise, how it came that the Name of the Vessel was not sent you. We are at a Loss to account for, as it is our usual Method to write the Vessel and Captain's Name at the Bottom of the Bill of Parcels; they were shipped 21st *July* last on board the *John and Margaret*, Captain *George Wilson* for *Leith*, who must have arrived before now. We hope, that before you receive this, the Goods will be come to hand, and doubt not of their proving to content. If you have not received them, by enquiring at *Leith*, doubt not but they will be found there, &c.

George
Thomson to
William
Brough at
Leith. 6th
Sept. 1753.

I Got Invoice of a Box and Truss of Goods sent a good many Weeks ago, the Truss in *June*, and the Box 21st *July*, but does not mention what Ship they were sent with. I desire you will be so good as to enquire at the Bulking-master, and see if he has seen a Box and Truss directed for me: They are perhaps lying in some of the Ware-houses at *Leith*, or come with Mr. *Hay*; and if you get them, be sure to send them on Receipt hereof with *James Leishman* Carrier, who lodges at *James Dutchfield's* in the *Grass-market*. Fail not, as I want them immediately, and oblige, &c.

George
Thomson to
William
Brough at
Leith. 26th
Sept. 1753.

SIR, About two Months ago I received a Letter, with Invoice of a Box shipped for me by Messrs. *Brough and Wade* Merchants in *London*; they neglected to mention the Name of the Ship or Captain's Name; but every Ship that came to *Leith* or *Borrowstounness* since, I expected my Goods; but as no Account of them could be got, I wrote to *London* that the Goods was not come to hand, and that I had enquired at *Borrowstounness* and *Leith* in the ordinary Way for them; but as they neglected to send me a Receipt, or so much as the Name of the Ship, or Captain's Name, I did not know who to seek them Goods from. This Day I got a Letter, telling me they had received mine, and that they were surpris'd they had forgot to advise

me

me of the Ship and Captain's Name; and they advised me they shipped the Goods in a Box on the 21st *July* last, on board of the *John and Margaret*, Capt. *George Wilson*, for *Leith*, which must certainly be arrived long before now. I desire you will call at Mr. *Wilson's* for a Box directed for me, and be sure to send it directly with the Bearer, for I want it instantly. I have losed some Customers by wanting it so long; and if it comes not with the Carrier this Week, it will be a Disappointment to me. However, if it is in *Leith*, I expect you will be sure to send it, &c. [To this Letter is subjoined the following Postscript:] " If the Bearer *James Leishman* cannot bring it, be sure to send it up to Mr. *John Sharp* at the White Hart in " the *Grass-market*, and he will send it to me in his Waggon."

I Received yours of the 26th; for Answer, I got a Truss for you from *Wilson's* Ship the 26th of *August*, of one Barrel Bulk, which I sent you. Mr. *Wilson* sailed Yesterday, so can hear nothing of it by him; but pray, in your next, advise if you have received the Truss sent you by *Sharp's* Waggon. All the Enquiry I can make to find it shall be made, &c.

W^m. Brough
at Leith to
Geo. Thom-
son Defender
29 Septem-
ber 1753.

I Received yours of the 19th instant, and observe you say you sent me a Truss, which came out of Mr. *Wilson's* Ship. I looked to my Invoice dated 21st *July*, and I find the Box with the Velvets is packed up with Stuffs for Womens Gowns, and some Shalloons, all in one Wrapper; so that the Truss you mention sent 6th *August* last, must be what I want. I never had any Goods by Mr. *Sharp's* Waggon, but one Truss on the 18th *July* last; so what is come of the Truss you mention, I know not, for it never came to my Hand; and it's not coming has not only put me to a deal of Trouble in looking for it, but lost me the Sale of some Mortcloths of Velvet, which is no small Disappointment. Mr. *Sharp*, if he got it, ought to get a Bill of Sale put in his Hands, and obliged to pay it. I beg you will lose no Time in finding out what is come of it; for it wants but 20 Days of three Months since it was shipped, which is ridiculous. I must say, whoever has it, has not done me Justice. I expect your Answer in Course of the Post. I have also wrote to Mr. *Sharp*, who I fancy you will have Occasion to advise with about it, &c.

Geo. Thom-
son to Willi-
am Brough,
1. Oct. 1753.

B

On

Geo. Thom-
son to Willi-
am Brough,
6.Oct. 1753.

ON Receipt of yours dated 29th *September*, I wrote you in Course of the Post, that I had received no Truss you mention, that you sent me by the Waggon 6th of *August* last, which you got out of Mr. *Wilson's* Ship, at which am not a little surpris'd, and which is a great Loss to me. I wrote to Mr. *John Sharp* same Post I wrote you on *Monday* last, but have had no Answer from any of you. I spoke to Mr. *Sharp's* Father as he went through here, and gave him a Memorandum to enquire about it in *Glasgow*, in case it happened to go there in a Mistake; and this Day as he came East, told me he had made Enquiry, and no such Thing to be found there. I by this again intreat you to see about it without Loss of Time; for if it come not to me betwixt and *Tuesday's* Night first, whoever has it, must keep it, and pay me not only first Cost, but all the Profits I could have made on the Goods, and is what I will insist on, and most reasonable at any Rate; and the more especially, as I wrote to *London* for Velvet to serve several Parishes in Mortcloths, which are Articles I may not get such a Demand for, for 20 Years to come. I have lost the Sale of some of them, and shall lose them all, if the Truss come not to me betwixt and *Thursday* first, our Market Day, when I expect them all here to take off the Cloths, and will wait no longer; it was much I got them to wait so long; if it had not been Time of Harvest, it would have been impossible to put them off so long. I assure you I am very ill used in that Truss, being so long kept from me. If it is to come at all, shall expect it with Mr. *Sharp's* Waggon on *Tuesday*; and if it does not come that Day, I shall write to *London*, and advise them about it, who will no doubt first prosecute Mr. *Wilson* the Shipmaster. Your Answer will oblige, &c.

Geo. Thom-
son to Willi-
am Brough,
10.Oct. 1753.

I Every Post since I wrote you the 1st instant, expected an Answer from you about the Truss you say you sent me 6th *August* by Mr. *Sharp's* Waggon; I wrote him same Day I wrote you, and got no Answer till just now, wherein he says, that he did not get it from you; so there is a necessity for losing no Time in finding out who you gave it to. It is a great Loss and Disappointment to me. I have just now been writing a Letter to the Gentlemen at *London* who sent it, but thought I would not send it off, till I got your Answer; for no doubt they, on Receipt of my Letter, will immediately attack Mr. *Wilson* the Shipmaster for it, and he must find it out. I beg your Answer in

Course

Course of the Post, for I must either have it immediately, or not at all, &c.

I Received your Favours of the 1st, 6th, and 10th, which no little surprizes me. I wrote you formerly I had received a Truss for you from on board *George Wilson* the 6th *August*, and sent it off by *John Sharp's* Waggon the 13th. I went up to *Edinburgh* on Purpose on *Tuesday* last, to converse Mr. *Sharp* about it, where I would have wrote to you, but was too long of getting Mr. *Sharp*, so could not reach the Post. I saw some of Mr. *Sharp's* Lifts, for it seems he keeps no Books, and he told me two of them Lifts was lying at *Glasgow*; and as his Servants who drove the Waggon were along with it, who commonly came to *Leith* for the Goods, I could not get such an Answer as I wanted. But your Letter I received this Day surprizes me most of all, which lets me know, that Mr. *Sharp* wrote you he did not get it from me. He may say so, because his Servant got it from me here, and he must answer; for his Servant, he told me in a very abrupt Way, he wished somebody had not called for the Truss in his Name. But pray make Enquiry at your own Town where the Waggon stops, and did then stop, to know if your Truss be not left there; for *Sharp* keeps only Slips of Paper; and by comparing some of them with my Book, I found he had not set down some other Goods I had sent by him. However I must wait till the Waggon returns, when I may have Opportunity of convening both him and his Servants, which be assured I shall do: And for the future his Waggon, I suppose, will not be so well employed. I am heartily sorry for your wanting the Truss so long, and have this Night wrote to *Glasgow* to see if it has gone there by Mistake. I shall write to you so soon as I have done any further about it, am, &c.

Wil. Brough
to the Defen-
der, 11. Oct.
1753.

I Received your Favours just now, and observes what you say. Mr. *Sharp* says he keeps a regular Book, where every Thing he carries is contained; and that if you sent that Truss, it must be with some other Person, for he is confident it was not given to him; for he says, that Week you say it was sent, he received all the Goods at *Leith* himself, which was 16 Boxes Brimstone only; he also thinks it's very odd you sent a Truss at that Time, and never sent a Letter of Advice till 4. *September*, but I got no Advice of its being sent till 29. *September*; but

Geo. Thom-
son's Letter
to William
Brough, 12.
Oct. 1753.

but I fancy you would write along with the Truss, and whoever has the Truss will have the Letter. I am sorry this Mistake has happened, and it is very unlucky for me, for I wanted the Goods home in a great Hurry, and desired the Merchants at *London* to send them in all Haste, and that with the very first *Borrowstounness* Ship. When the Invoice came, I was surpris'd they did not mention the Name of the Ship, only, agreeable to my Order they had sent them, which made me expect them with first Ship to *Borrowstounness*. I waited till three Ships came; and finding they were in none of them, I wrote back to *London*, and then they advis'd me they were sent with Mr. *Wilson*; if they had told me so in the Invoice, the Mistake would not happened, for I would immediately wrote you to send them with all Expedition; yea, I wanted them so pressingly, that I would sent exprefs; for about that Time when they would be come, I lost the Sale of several Mortcloths that Week, or Week after, and am afraid will lose the Sale of all the rest, which is no small Loss. I beg you'll lose no Time in finding out the Mistake, for it has been delayed too long, and I will be blamed by the Merchants who sent them, for not pushing faster. However I shall yet wait the Return of the Post, for your further Answer, and then I must write to *London* and advise them how the Matter stands. I beg you'll not delay, for I can delay no longer. I enquired at the Place where the Waggon lodged at that Time, but no such Thing left there, Your Answer in Course is expected, &c.

Will. Brough
at Leith. to
Geo. Thom-
son, 13. Oct.
1753.

I Received yours of the 12th; and on Receipt of it went up to Mr. *Sharp*; but as the Waggon was not come from *Glasgow*, and so could not see his Servants, I can write you no further than in my last. However I shall go to *Edinburgh* again on *Monday*, when probably I will get his Servants, and shall then know more of the Matter; but as I understand he sometimes sends Goods, when the Waggon is full, by other Hands. Pray make Search at all the Carriers in your Place, which will oblige, &c.

Geo. Thom-
son the Defen-
der to Willi-
am Brough at
Leith, 19. Oc-
tober 1753.

I Received your Favours dated 13th *October* inst. I'm surpris'd it is so long of coming; it seems the Post-office are dilatory as well as Carriers. I expected your Answer sooner; as it came not, I have wrote the Case as it stands to *London*, I am afraid this Affair will be troublesome to all having any Concern. I shall be glad how soon the Mistake

Mistake is discovered. However I am the Sufferer in the mean Time in several Shapes. I shall be glad to hear what you have done, in Course of the Post, &c.

Gentlemen,——On Receipt of your last, I immediately wrote to Mr. *Wilson* Shipmaster at *Leith*, but he was failed that Morning before my Letter got there. I wrote to Mr. *William Brough* Merchant, who receives a good many of the Goods landed there, and he wrote me, that he got a Truss out of Mr. *Wilson's* Ship 6th *August*, which he sent me by the *Edinburgh* Waggon on the 13th; immediately wrote him, if he did, it never came to my Hand; and I also wrote to Mr. *John Sharp* the Master of the Waggon, and he wrote me he received no Truss for me about that Time; Mr. *Brough* writes he he did deliver it to the Waggon. There has been Enquiry made *Glasgow*, to see if it is gone there in a Mistake; and I have been at all the Pains I could, to see if possible to find it out, but can get no Account of it. Mr. *Brough* writes me he is to convene both Master and Drivers of the Waggon before a Magistrate; what will be the Event I know not, but am afraid the Goods are lost some Way or other. I am sorry at the Mistake, for if you had sent the Goods as desired you, by Mr. *Falconer*, or first *Borrowstounness* Ship, this would not have happened; that Truss would com'd safe and soon to my Hand: And though you did send them, contrary to my Orders, by a *Leith* Ship, yet if, when you sent the Invoice, you had told me by whom you sent the Goods, I would immediately sent for them, for I had immediate Demand for the Velvet, which, by the Mistake, I have lost the Sale of, which is a great Disappointment, as I not only lost the Sale of the Velvet, but also of the Fringes and other Furniture. I fancy it will be necessary that you apply to the Shipmaster, and let him apply to the Person he gave it to, so as some Body may be made liable for it; for there is no Appearance as yet of its casting up, which I think very odd, and was obliged to buy several Sorts of Goods I wanted here. The Shipmaster I fancy is at *London*, and the sooner you apply, the better, for I can do little more in it, &c.

P. S. I shall do all I can to find out the Truss, and shall write you.

I Received your Favours of 19th. which I cannot say I can well comprehend, as I wrote you the 13th to enquire at all the Carriers in your Place for your Truss, and to write me accordingly; but

Geo Thomson
to Brough and
Wade, 17th
Oct. 1735.

Wil. Brough
to George
Thomson, 20
Oct. 1735.

you don't say whether you have enquired at the Carriers, or whether you have got the Truss, only that the Affair will be troublesome to all having any Concern, and that you are the Sufferer in the mean Time in several Shapes, for which am very sorry; but please know I was informed you had got the Truss, but that it had got some Damage; if so, pray write in Course who delivered it unto you; for on making stricter Scrutiny, I find the Truss must come to you by *Andrew Gardiner* Carrier in your Place, and if he has damaged it, he must no doubt suffer for it; if you do not chuse to pursue him yourself, write me the Condescendence of your Loss, and I shall take Care to recover it, if he be worth as much. I have had a deal of Trouble about this Affair, which happened, I must own, by my own Fault; but I having my Mother just a-dying, and her Interment truly blunted my Memory for some Days. I hope you will write me on Sight, if you have received the Truss, and from whom, and in what Condition, &c.

Geo. Thomson
son Defender
to William
Brough at
Leith, 22d
Oct. 1753.

I Received your Favours this Morning, and observes you're informed the Truss is come to my Hand by *Andrew Gardiner* Carrier, but that it had got some Damage: But whoever is your Informer, is a bad one, for he told you a great Lye; for it never came to my Hand by no Person whatever. I am sorry you have so low Thoughts of me, as to imagine if it had come to my Hand in any Shape, that I would asked it again from you or any Body. If it had come damaged, I might have wrote you, and enquired how it came to be so; but to have wrote you that it was not come, if I had got it before, would been ridiculous. However, after I got your Letter, I called on *Andrew Gardiner*, and asked if he had got any Truss for me in the Month of *August* last, that came from *Leith*, he declared no; you may examine him, he will be in *Edinburgh* the Morrow, and *William Russel* also, who carries a good deal for me. I have inquired at all our Carriers, and at *Borrowstounness*, and every Body I thought could give me the least Intelligence about it, and can get no Account of it, tho' if you have got it, I am sorry you should have forgot what you have done with it. If you please, may look into your Cellars, and see if it is lying in any By-place about your House, as I wrote you before. Its not coming is a great Loss to me; it has disappointed several of my good Customers, its being so long in coming; and I still putting off my Customers, who I used to serve. It has given me great Uneasiness; and now no Appearance of its coming at all surprises me very much.

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If you do not find it in your own Custody, I wish you may find out who you have given it to; for whether you find it out or not, I never saw it, nor can find out any Body that has ever seen it in *Scotland*, but yourself. I am sorry the Mistake has happened, and sincerely wish it may be found out; and you are the only Person that can seek it out, for I have made all the Inquiry I could, and to no Purpose. I hope you'll lose no Time in doing all you can to find it out. If you please, shall send you a Copy of the Invoice of this Truss a-missing, if you have Occasion for it; and advise me if I can do any more in the Affair, &c.

That Truss has given me no small Concern, and not hearing from you last Week, nor no Account of its being found, makes me again desire you'll let me know if you have got any Notice of it, or if you have any View of finding it out. On *Saturday* last I asked at Mr. *Sharp's* Father as he went East, if there was any Notice got of the Truss; he said no; but was sure they did not get it, and all the Carriers in this Place say they never saw it. I am sorry you seem to have forgot who you gave it to, and it was very unlucky in my Merchants they did not mention the Name of the Ship in the Invoice; for if they had, I would immediately wrote you to forward the Truss without Loss of Time, or sent an Express for it, as I had Customers waiting impatiently for its coming, and I was as impatient; but still expected it with a *Borrowstownness* Ship, as I had ordered it. And when Mr. *Air* came, who was the first Ship, I was uneasy: I waited till Mr. *Falconer* came, and when he said he had it not, surprised me much. I waited till Mr. *Main* came, and when I was told he had it not, I wrote to *London* to know what was the Matter of its not coming; and when I got this Answer, immediately wrote you, and got yours, dated 29th *September*, telling me, you got a Truss for me out of one Mr. *Wilson's* Ship 6th *August*, which you sent with the Waggon, was the first Notice I had of its being come to *Scotland*. I was then surprised, what was the Reason of its being kept up so long; but now it seems, whoever has got it, does not incline to give it up at all, which I am sorry for. I shall be glad to hear from you, and to hear the good News of its being found out.

Geo. Thomson the Defender to Wil. Brough at Leith, 29th Oct. 1753.

I Received your Favours of the 29th ult. but I am sorry that you have not yet heard of that Truss, which I have been doing all in Power anent. All I can say about it is, that after I have made the strictest

Wil. Brough to George Thomson Defender, 3d Nov. 1753.

strictest Over-haul of my Books, I find it was given to *James Crawford* Porter in *Edinburgh*, to be by him given to *Andrew Gardiner* Carrier, whose Name *Crawford* desired me to put in my Books; but the latter seems not to remember whether he gave it *Gardiner*, or any other Carrier particularly; so I design to lay him up till he find whom he gave it to. If pleases, may send me a Copy of the Invoice, and whether you would have it advertised in the News Papers, &c.

Geo. Thom-
son Defender
to William
Brough, 6th
Nov. 1753.

I Received your Favours of 3d instant, and am sorry you have not found out the Trufs. I have, conform to your Order, sent you a Copy of the Invoice and Letter, by which you see they happened not to mention the Name of the Captain or Ship, but only, agreeable to my Order; and my Order was to come with Mr. *John Falconer*, if he was ready to come off; and if not ready, to be sure to come with first *Borrowstounness* Ship, which made me expect them by a *Borrowstounness* Ship, and no other. I waited, as I wrote you before, impatiently, till first *Duncan Air*, then *John Falconer* and *James Main* came, and none of them having it, I wrote immediately to *London*, when I got a Letter, advising of them being sent with Mr. *Wilson*, and immediately wrote to Mr. *Wilson* and you; and your Answer was the first Notice I got of its being landed in *Scotland*. Now if I had been advised in the Invoice of its being sent by a *Leith* Ship, would have prevented the unlucky Mistake and Trouble we have had about it; for, as I had so pressing a Demand for the Goods, and wrote for them to *London* to be sent with all Expedition, you may be sure I would sent Express to *Leith* for them.

I observe you think you gave it to *James Crawford*, to be by him given to *Andrew Gardiner*, and that you design to lay up *Crawford*, till he find who he gave it to. I think you are right to lose no Time in landing it on some body; and I wish the Person who has had it all this Time in his Custody may be speedily discovered, and ought to be punished. You want to know if I would have it advertised in the News-papers. You may do in that as you please. But if I had been in your Case, I would done it long ere now. I, to be sure, am a Sufferer by the Loss of my Customers by the Disappointment, but the Loss of the Goods cannot land on me. Messrs. *Brough* and *Wade* are to blame in not sending them by a *Borrowstounness* Ship, conform to Orders; and you seem not to be sure who you have given

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given it to: But if you had sent it up to my Brother-in-law, Mr. *Charles Addison*, at *Borrowstounness*, where you usually send any Goods that come to your Hand for me, would have prevented all this Trouble. I wish you may find it out soon: I very much long to hear of its being got, &c.

I Have got a Letter from Messrs. *Brough* and *Wade*, to pursue you for that Truss of Goods they sent, which you have lost. I by this desire you will let me know what you are resolved to do, whether you will pay it pleasantly or not; for if you do not incline to pay it, till you are forced by a Process, a Summons will be ordered without Loss of Time; for they are determined not to be trifled saying, you gave it first to one Person, then to another, a third and fourth, and so on, all to no Purpose, as all refuse it. It is needless for me to say any more about it than what I have said; only, that your finding it out would be a great Satisfaction to me; and in the mean Time your ordering Payment will prevent Trouble to you, and him who is, &c.

—H Owever the Contents of it was chiefly to tell you, that the Goods sent for me the 21st July, is not com'd to my Hand, and I have been at all Pains possibly I could to find out the Truss, but no Account of it, only that Mr. *William Brough* Merchant in *Leith*, acknowledges he received a Truss directed for me, on 6th August, out of Mr. *Wilson's* Ship, which he says he sent to me, but there is no body he has yet named, owns they received it from him; he seems not to know what he has done with it. As Mr. *Wilson* is at *London*, you had best apply to him about it, and write to Mr. *Brough*; for I have wrote a great many Letters, and got several from him about it, but as yet no Account of the Truss, and am much afraid of its never casting up, for I do not think an honest Man would keep it in his Custody so long, as I fancy you have put a plain enough Direction on it.

WE are very sorry that you have not been able to get your Goods. We can prove the Delivery of them here, on board the Ship we advised you, and did all for the best; are very sorry it proves so great a Disappointment to you.

D

SIRS,

George
Thomson the
Defender to
Mr. Brough.
10th Dec.
1753.

George
Thomson to
Brough and
Wade.
13th Nov.
1753.

Brough and
Wade to
George
Thomson.
14th Nov.
1753.

William
Brough to
Brough and
Wade.
27th Nov.
1753.

SIRS,——Though unacquainted, I take the Boldness to write you the following, viz. I understand there was shipped by you, on board the *John and Margaret*, *George Wilson* Master, the 21st July last, one Bale marked *G. Thomson, Falkirk*, and I have been Doer for Mr. *Thomson* these some Years past. I received said Bale for him out of the Ship; and I understand further, that Mr. *Thomson* has wrote you several Letters of his not having got the same, as he has done to me also.

I would beg the favour of you to send a Copy of what Mr. *Thomson* has wrote you upon the above Subject, to any of your Correspondents at *Edinburgh*, which will set the Matter in a clear Light; and my Reason for desiring of this Favour, is, that though I can prove *Thomson's* having received the Bale, he still writes me he has not; and his Letters to me insinuate, that he intends to keep you out of the Value of the Goods: So hopes you'll keep the above entirely to yourselves, and write me, whether you intend to send the Copy above desired to any of your Correspondents at *Edinburgh*, or not; I hope you'll indulge me in complying, seeing I have only your Interest at Heart, that you may get your Money.

George
Thomson to
Brough and
Wade.
18th January
1654.

I Was at *Edinburgh* last Week, and went down to *Leith*, and waited upon Mr. *Brough*, who still owns he received a Truss directed for me, out of Mr. *Wilson's* Ship in *August* last, but still says he sent it to me, which I never received, nor no body by my Order, and tho' he has named four or five different Persons he gave it to, they all refuse they received it. I have been at all Pains in my Power to find it out, but to no Purpose. I find Mr. *Brough* will not pay it, till he is pursued; when I told him he would be found liable, he said, you or me might pursue when we pleased, he would answer. I took Advice of several Lawyers at *Edinburgh*, and was told, as you did not send the Goods with a *Borrowstowness* Ship, as desired, and no Receipt, nor Name of the Ship, or Ship-master's Name you sent them with in the Invoice, it was not proper I should pursue Mr. *Brough*. It is your Business to pursue for the Goods, or Payment of them, and the Process must be in your Name only, and the Ship-master must be pursued also; for who knows whether the Truss Mr. *Brough* got out of Mr. *Wilson's* Ship came from you or not. He must make that appear; so the sooner you push the Thing, the better; and if you think

think proper to send a Power to me, to pursue them at *Edinburgh* in your Name, no Pains shall be wanting, I shall do every Thing in my Power, so far as Law directs, in order to recover Payment for you, you paying the Expence, if it's not got off Capt. *Wilson* or *William Brough*, and it's thought they must pay the Goods and Damages; so if you please, no Time should be lost in pursuing them, &c.

Your not writing me an Answer to my last makes me believe that you have settled the Affair with Mr. *Wilson* the Ship-master, with whom you say you sent the Truss of Goods that never came to my Hand. If you have not settled the Matter with him, you should either sent me, or some Person about *Edinburgh*, a Power to pursue him and Mr. *Brough* the Factor at *Leith*, before the Admiral Court at *Edinburgh*, which if you had done on Receipt of my last, some of them would been no doubt liable to paid it before now, and no Pains for that End should have been wanting on my Side, and if you have not ended with Capt. *Wilson*, be sure to lose no Time in sending a Power either to me or some other Person at *Edinburgh*, for they cannot be pursued without a Power from you.

5th April
1754.
from the De-
fender to the
Pursuers.

I Am indeed much surpris'd you have not either pursued the Ship-master and Mr. *Brough* at *Leith*, or sent me a Commission to have pursued them long before now, for the Goods you say you sent for me, that is a-missing and never came to hand; if you had sent me a Commission when you was desired, I am, and several Lawyers at *Edinburgh* are of Opinion, they would have been found liable and obliged to pay it before now; so you may blame yourself if you come to any loss, for I would done all in my Power for you in the Affair, but could do nothing in pursuing them, without a Power from you; as you sent me no Ship-master's Receipt with the Invoice, no, not so much as mentions the Name of a Person or Ship you sent the Goods with, so you cannot expect I will be liable for the Price of them; but if you had given Orders to pursued for the Goods, the Price might have been got before now, or the Goods found out; but by your Delay, whoever has the Goods by this Time, will be thinking, will get leave to keep them: I shall be sorry, if that Affair make any Difference between you and me; for no reasonable Person can blame me in the Affair; for I have spared no Pains nor Expence in order

2d July 1754.
the Defender
to the Pur-
suers.

der to find out the Mistake, and if I had got a Power from you, an End would have been put to it before this Time; and if you yet incline to send me a Power, or to a Writer in *Edinburgh*, no Pains shall be wanting I can be at to serve you. [*Then follows a new Commission for Goods introduced thus :*] If you please may send me with first *Borrowstounness* Ship, and be sure to send the Master's Receipt, 2 Yards, &c.

At an After-calling of the said Cause, of the Date 14th *February* 1755, the Procurator for the Pursuers offered to prove, that the Parcel of Goods libelled was delivered to *William Brough* the Defender's Correspondent and Manager at *Leith*, and actually delivered by him to the Defender or his Order, and craved a Term for proving thereof, and a Commission; which being considered by the Lord Ordinary, he allowed the Pursuers to prove *prout de jure*, that the Parcel of Goods libelled was received by *William Brough* at *Leith*, as Manager and Doer for the Defender, and that he delivered the same to the Defender or his Order, and assigned a Day, and granted Commission and Diligence.

Accordingly the Pursuers extracted an Act and Commission and Letters of Diligence, and by virtue thereof, caused cite several Witnesses for proving the Points above written, and admitted to their Probation, and required the said Defender, under Form of Instrument, to attend the said Proof, Time and Place therein mentioned, to the End the Witnesses after named might know whether or not he was the individual Person to whom the Parcel of Goods in question was delivered; who accordingly attended the said Proof, and the Witnesses compeared and deponed as follows:

John Bain Porter in *Leith*, aged about thirty Years, married, depones, That in the Year 1753, at the Time of the *Leith* Races, the Defender Mr. *Thomson* met with the Deponent upon a Morning, and asked him if he knew the Ship the *John* and *Margaret* of *Leith*: That the Deponent answered, he did not; but Mr. *Thomson* told him the Captain's Name was *George Wilson*, and desired him the Deponent to go to the said Ship, and enquire for a Truss or Parcel of Goods belonging to him, and at the same Time gave the Deponent the said *George Wilson's* Receipt for the same: That the Deponent accordingly went to the said Ship, and not finding the Master, enquired at *Robert Wilkieson* the Mate for the above Goods: That *Robert*

bert Wilkieson desired the Deponent to go to *James Oliphant* the Bulker, where he would get Notice of the same: That the Deponent accordingly went to *James Oliphant*, who desired the Deponent to go to *William Brough* a Factor, to whom the Goods had been sent: That the Deponent accordingly went to the said *William Brough's*, who acquainted him that he had the above Goods: That upon this the Deponent returned to Mr. *Thomson*, and informed him of what Mr. *Brough* had said; upon which Mr. *Thomson* gave the Deponent Half a Guinea, and desired him to go back to Mr. *Brough*, and to get the said Goods, and leave with him the Ship-master's Receipt, and pay the Freight and other Charges on the Goods; and the Deponent accordingly returned to Mr. *Brough's*, and offered him the said Receipt, and Payment of the Charges; but Mr. *Brough* said, that there was an Accompt betwixt Mr. *Thomson* and him, and therefore desired the Deponent to return the Money, and the said Receipt to Mr. *Thomson*, but gave the Deponent the Goods: That the said Goods were packed up in the Form of a Chest of Drawers, but not third Part so large: That when the Deponent brought the Goods to Mr. *Thomson*, it was raining, whereupon Mr. *Thomson* desired him to put a Cover about them, and carry them to Mr. *Ferrier's* Stabler at *Bristol* Port of *Edinburgh*: That the Deponent put the Goods into the Shop in the Broad Wynd of Leith of *James Elderstone* Cordiner, in presence of Mr. *Thomson*, till he should get a Cover; and thereafter he carried them as directed to the House of the said Mr. *Ferrier*, and that he then received from Mr. *Thomson* who was there present, 18 Pence for his Trouble: That Mrs. *Ferrier* was then present when the Deponent was paid; and when the Deponent told Mr. *Ferrier* what he had got for carrying the Truss, he said to him he had gained more that Morning than he had done. And being interrogate for the Defender, depones, That he never saw Mr. *Thomson* before he was employed by him as above, and only once since that Time saw him in *Edinburgh* about twelve Months since, at which Time he had on black Cloaths. Depones, That sometime in the Year 1753, as the Deponent thinks, but is not positive as to the Time, or whether it was in that Year or not, he had Occasion to call at Mr. *Brough's* Warehouse, when he told him, he would be glad of the Carriage of such a Truss as he got out of his Cellar sometime before; whereupon Mr. *Brough* asked him, if he remembered

where he had carried that Truss; that the Deponent told him he did remember, and at Mr. Brough's Desire, carried him to Mr. Ferrier's House. And further depones, That he received the Goods out of Mr. Brough's Cellar from a Maid, who he believes is since dead, because Mr. Brough himself was not then very well. *Causa scientiæ patet, &c.*

Wit. 2.

James Elderstone, Cordiner or Cobler in *Leith*, aged thirty-six, married, depones, That in the Year 1753, at the Time of the *Leith* Races, but what Time of the Day he does not remember, *John Bain*, the preceeding Witness, brought a Truss or Parcel of Goods, and asked Liberty of the Deponent to lodge the same in his Shop, as it was then raining, till he should find out the Owner of the Goods: That accordingly, soon thereafter, he brought Mr. *Thomson*, whom the Deponent sees now present, and thinks it is the same Person whom the said *John Bain* brought to his Shop as aforesaid, though he is not quite positive, as his Habit is different: The said Person remained at the Deponent's Shop Door till the above *John Bain* went away and brought a Cover to wrap the Goods in; and that the Deponent assisted to put the Goods on *John Bain's* Back, who accordingly went off with the same, and the above mentioned Person along with him, who had on brownish Cloaths and a big Coat a little lighter. Depones, That he saw the same Person a second Time, though he does not precisely remember when, upon the following Occasion: *William Brough*, Factor in *Leith*, carried the Deponent to the *Kirk-gate*, and went himself into a House, and desired the Deponent to stand at the Door, and observe the Persons that were coming up or going down Streets, and to take Notice if he knew the Gentleman who came to his Shop Door as above mentioned: That accordingly the Deponent observed a Gentleman going up the Street towards *Edinburgh*, whom he took to be the same Person, and acquainted Mr. *Brough* thereof, who told the Deponent it was the same Person. And upon the Defender's Interrogatory, depones, That when Mr. *Brough* carried the Deponent to the *Kirk-gate* as above, he called upon him at his own House. *Causa scientiæ patet, &c.*

Wit. 3.

Margaret Rammage, Spouse to *Robert Ferrier* Stabler at *Bristol* Port of *Edinburgh*, aged forty or thereby, depones, That sometime in *August* 1753, a Porter brought a Truss of Goods to the Deponent's House, and there was a Gentleman came along with him, who said the Goods

Goods belonged to him, and that they were come from *Leith*, and that they were going to *Newcastle*, and said they were valuable Goods, and he was afraid they would get Rain. Depones, That she does not think she would know the same Person again. Depones, That she does remember to have seen the said Gentleman pay the Porter, for that she was in Bed when they first came to the House, and that her Husband told her that the said Gentleman and the Porter had been with him in the Kitchen. Depones, That that Gentleman bought from the Deponent a Pack-sheet, in order to wrap the Goods in, and paid her four Shillings for the same; and that the Truss was in the Form of a half Chest of Drawers or Scrutore, not altogether square: That the said Gentleman had on coloured Cloaths, with a big Coat a little lighter than the Cloaths. Depones, That she saw a Direction writ by the said Gentleman upon a Card, which she gave him, but did not see it put upon the Parcel, nor knew what it was. Depones, That sometime that Day she asked *Fergus Ferguson* her Servant what had become of the Parcel, for she was afraid it had been delivered to a wrong Hand, who answered it was not; for that the Gentleman himself came for it, and brought a Man and a Horse with a Car Saddle along with him, and assisted to put it on the Horse himself. Depones, That about twelve Months ago, but she is not positive as to the Time, one Mr. *Brough*, who told the Deponent he lived in *Leith*, came to the Deponent's House, and enquired at her concerning a Truss of Goods that were brought to her House about *August 1753*; and she gave him such Account of the same, as is mentioned in the preceeding Part of her Oath. *Causa scientie patet, &c.*

Fergus Ferguson, Ostler to *James Boyd* Stabler in *Canongate*,^{Wit. 4.} aged twenty six, not married, depones, That sometime in *August 1753*, the Deponent saw the Defender Mr. *Thomson* now present, in the House of *Robert Ferrier* his then Master, in a Morning; and he verily believes that Mr. *Thomson* now present is the same Person whom he saw in Mr. *Ferrier's* House at the Time above mentioned: That at the same Time he saw *John Bain*, a preceeding Witness, whom he had known formerly, who told him that he had brought up a Bundle of Goods from *Leith* to the House belonging to a Gentleman. Depones, That he was called into the House to wrap up the Goods in the Bundle in a Sheet, which he did in the said Gentleman the Defender's

sender's Presence: That the Bundle was pretty large, and something of a Square Form, and that the Deponent carried the said Bundle to the Warehouse at his Mistress's Desire, who told him it was going to *Newcastle*. Depones, That some time the same Day the said Gentleman came back for the said Bundle, and brought a Man with a Horse and Car Saddle along with him, and the Deponent and the said Gentleman assisted in putting the Bundle on the Horse before the said Man, and at that Time the Horse's Head was turned to the East, but the Deponent did not see which Way he went. Depones, That some time before *Martinmas 1753*, a certain Person, whom the Deponent does not know, and whom he thinks he would not know if he saw again, came to his Master's House, and asked the Deponent in Presence of his Mistress, about a Bundle or Truss of Goods that had been brought to the said House in the Month of *August* preceeding, and the Deponent gave him the same Account thereof as mentioned in the preceeding Part of his Oath. Depones, That since the Deponent received a Summons, which was upon the 27th of *May* last, *John Bain*, a preceeding Witness, came to the Deponent, having had an Errand to his Master's House, and talked to him about the foresaid Bundle, and asked him if he had got a Summons, and said it was the Subject of a Law Plea betwixt one Mr. *Brough* in *Leith* and Mr. *Anderson* at *Falkirk*; and that the said *Bain* at that Time told him, that the Person who had interrogate him as before mentioned in Mr. *Ferrier's* House, was one Mr. *Brough* in *Leith*, and the Deponent thinks that *John Bain* was then along with Mr. *Brough*. Depones, That the Gentleman who got away the Truss or Bundle of Goods, as formerly mentioned, had on a brownish big Coat, and to the best of his Remembrance rode on a grey Galloway. *Causa scientia patet, &c.*

Thereafter a State being prepared, and the Cause inrolled in the ordinary Action Roll for the Inner-house, the same came in Course to be called before the Lords upon the 18th Day of *November 1756*, when their Lordships were pleased to pronounce an Interlocutor allowing either Party to give in Condescendences of what Facts and Circumstances they would further prove in the Cause in order to clear up the Matter in issue, against the 7th Day of *December* then next. In Obedience to which Interlocutor both Parties lodged the following Condescendences, viz.

Con.

Condescendence for Messrs. *Brough* and *Wade*.

1^{mo}, That it is generally the Practice of the Pursuers, when they send any Goods to *Scotland* or elsewhere, by Sea, to subjoin the Invoice of these Goods to the Ship-master's Receipt, and at the Foot of the Invoice to give a Letter of Advice thereof to their Customers by first Post, without ever mentioning the Name of the Ship, except when the Shipmaster's Receipt is on a separate Paper; and if the Receipt, Invoice and Letter, exceed the first Page, they leave a Blank upon the second at the Back of the Receipt, so as their Correspondent may cut it off to deliver up to the Shipmaster, without prejudicing the Letter or Invoice. This Custom they generally follow in order to save Postage, by making one single Sheet on the Back; and that they did so in the present Case.

2^{do}, That betwixt the 10th and 20th Days of the Month of *August* 1753, the Time of the *Leith* Races, the Defender *George Thomson* was in *Edinburgh*, and actually received, or caused one in his Name receive the Truss of Goods, which are the Subject of this Process, from *William Brough* at *Leith*, who was at that Time sick, and confined to his Bed, his Mother being upon Death-bed; and that *William Brough* at *Leith* is a Man of undoubted good Character and Credit in the Way of his Business as a Factor, and in every other Respect.

3^{tio}, That in the Month of *October* 1753, the Defender, *George Thomson*, furnished the Kirk-session of *Dunnipace* and *Lambert*, with Mortcloths of the Velvets contained in this Invoice of Goods in question, at least of the same Quality, and got Payment therefor the 25th of said Month.

4^{to}, That *William Brough* at *Leith* was employed by the Defender *George Thomson* as his Factor, as far back as the the Year 1750 or 1751, and that there was a current Accompt between them in *August* 1753, and at the Time Mr. *Thomson* received the Goods in question from Mr. *Brough*.

Condescendence for *George Thomson*.

1^{mo}, That the Defender, *George Thomson*, upon Receipt of *Brough* and *Wade's* Letter, bearing Date 21st *July* 1753, sent, on first

F

Notice

Notice that any Ship was arrived at *Borrowstounness* to enquire after his Goods, viz. the first Week of *August* said Year; and also went personally to *Borrowstounness* for the same Purpose in *August* said Year, prior to the said *Races*, which were upon the 15th, 16th, 17th, and 18th of *August* said Year.

2do, That it appears from Mr. *Thomson's* Books, and may be supported with other Evidence, that he was at *Falkirk* the above Race Days, as also the Day preceeding them, and particularly when the 10*l.* was paid to Mr. *Cuming*.

3tio, That when Mr. *Wade*, one of the Pursuers, was in *Scotland* in the Year 1754, he had laid before him the Invoice of the Goods and Letter of Advice in the Defender's Shop, in Presence of the Right Honourable the Lord *Elphinston*, where, notwithstanding of a good deal of Altercation, he never once pretended, that the Shipmaster's Receipt had been prefixt to the Invoice, or sent along with it.

4to, That before the Commission to the Pursuers, 29th *June* 1753, the Defender had Demands for Velvet Mortcloths from sundry Persons for *Dunnipace*, *Airth*, *Larbour*, and *Elphinston*: That the Defender furnished a Mortcloth to *Dunnipace* in *October* 1753 of the Velvet then on Hand, but could not serve the others, they not being pleased with any Velvet he then had, and by missing his Cargo lost the Sale of a Mortcloth to *William Adam* on the *Ill of Airth*, who was served at *Edinburgh*; but thereafter the Defender, in 1755, served *Larbour* and *Elphinston*, and begs leave to subjoin, for the Pursuers Satisfaction, as he understands Mr. *Brough* of *Leith* has been traversing the Country to know what Mortcloths the Defender furnished, that he has been a long Dealer that Way, and besides what remained of former Commissions, he had a Parcel of Velvet from *Ostle* and *Weddeby* at *Newcastle* in the 1751, from *Steel* and *Kutly* in the 1754, from *Gough* and *Titchborne* in the 1755; nor can they be ignorant that they themselves furnished the Defender with Velvets in the 1752, *November* 1753.

5to, As the honourable Court signified their Intention, that the Lord Ordinary himself should re-examine the Porter, Ostler, and Cobler, formerly adduced against the Defender, it is hoped your Lordships will also, in order to come at the Truth if possible, appoint the Examination of the Persons of Character, referred to in the Depositions of these Witnesses, as also the Carriers referred to by Mr. *Brough* at *Leith*,

Leith, and appoint him to produce his Books mentioned in the Letters of Correspondence, and also condescend upon the Name of the Maid in his Service in *August* 1753, who is said by the Porter to have delivered the Goods to him.

6to, The Defender being entirely ignorant what the Pursuers from the Beginning pointed at, could not take a conjunct Probation; and being still in the Dark as to what they aim at now, hopes your Lordships will indulge him with a Sight of the Pursuers Condescendence, and allow him, if necessary, to add to his Condescendence.

Thereafter the said Action and Cause being called, in Presence of the said Lords, upon the 10th Day of *December* 1756, their Lordships remitted the Cause, with the said Condescendences, to Lord *Auchinleck* Ordinary, with Power to his Lordship to re-examine the Witnesses already adduced for the Pursuers, and to allow what other Proof he should judge necessary for clearing up the Facts controverted, and to grant Commission for citing and examining such other Witnesses as he should see Cause.

In Consequence of which Interlocutor the said Action was, upon the 16th Day of *December*, inrolled in the Lord *Auchinleck's* Hand-roll, and his Lordship allowed both Parties Procurators to prove the several Facts contained in their mutual Condescendences, and granted Commission for that Effect.

And both Parties having extracted Acts and Commissions, and Diligences, the said *John Bain*, *James Elderstone*, and *Fergus Ferguson*, Witnesses formerly examined, being of new summoned, compeared in Presence of the Lord *Auchinleck* Ordinary, and deponed as follows.

John Bain Porter in *Leith*, cited on the Pursuers Diligence, but at the Desire of the Defenders, interrogate by both Parties as a common Witness, depones, That he has had no Conversation with any of the Parties in this Cause, or their Doers, concerning the Subject Matter of this Process, since he emitted his former Oath, and particularly, that he has had no Conversation with *William Brough* Merchant in *Leith* thereanent. Depones, That he has known the said *William Brough* Merchant in *Leith* these several Years, in the same Way that he knows all the Merchants who are employed in *Leith*: That upon some particular Times he has carried Goods for the said *William Brough*, but this very seldom; for that Mr. *Brough* commonly employs the Porters of *Telfer's* Company, and the Deponent belongs to what is called *Graham's* Company; and being further inter-

interrogate, previous to reading over his former Oath to him, he gave the same Account of the several Particulars therein mentioned as formerly, with these Variations: 1st, That according to his present Memory of the Transaction, he did meet with *George Wilson* the Master of the Ship, and that it was from him, and not from *Robert Wilkieson* or *Wilkie* the Mate of the Ship, that he got the Direction to go to *Oliphant* the Bulker, tho' at this Distance of Time he cannot be positive which of these two he got the said Direction from, but rather thinks, that it was from *Wilson*, and continued to think so even after hearing his former Oath read to him, tho' still with Diffidence; and the other Variation was, That he does not think that *Mr. Thomson* was along with him when he put the Goods into *Elderstone's* Shop; because, so far as he remembers, *Mr. Thomson*, when he sent the Deponent the second Time for the Goods, as mentioned in his former Oath, he told the Deponent that he was going in to *Mr. Ross* the Barber's Shop on the Shore to be shaven, and the Deponent would find him there when he returned with the Goods, and the Deponent left the Goods in *Elderstone's* Shop, because it was a heavy Rain, and thereafter went to *Mr. Ross's*, and acquainted *Mr. Thomson*; and this the Deponent verily believes was the Fact, even after hearing his former Oath read. And being further interrogate, depones, That when he came to *William Brough's*, as directed by *Oliphant*, he did not see *William Brough*, but only his Servant Maid, who told him, that her Master was sick, but that she would go in to him and deliver the Deponent's Message: That the Deponent on this told her he wanted a Truss, and delivered her the Receipt which had been put into his the Deponent's Hands by *Mr. Thomson* for the said Truss; at least the Deponent believed, that that Receipt was the Shipmaster's Receipt; for tho' the Deponent cannot read Writ, he was told so by *Mr. Thomson*, and when he carried it under that Description to *Oliphant* the Bulker, and showed it to him, he made no Objection to it, neither did *Wilson* the Master, to whom he likewise showed it, as he thinks, make any Objection to it: That the Maid returned, and gave *Mr. Brough's* Answer, that he had the Goods; whereupon the Deponent returned to *Mr. Thomson*, who sent him back in Manner deponed upon in the former Oath, when the Deponent got *Mr. Brough's* Answer delivered him by the Maid, agreeable to what is deponed upon in the former Oath, viz, that there was an Accompt between *Mr. Thomson* and him, *Mr. Brough*, and therefore that he

would

would not take any Money from him at that Time ; and does not remember any other Message being sent to Mr. *Thomson* ; particularly does not remember that the Maid said that Mr. *Brough* wanted to see Mr. *Thomson*. And being interrogate by the Defender, if he remembers what the Size of the Receipt was, which Mr. *Thomson* delivered to him, depones, it was a small narrow Piece of Paper ; and being desired to point out the Size of it upon the Margin of the Paper whereon this Oath is wrote, he pointed the same out both in the Length and in Breadth to the best of his Remembrance, and the same being marked out in black Lines by the Lord Ordinary, he deponed, That to the best of his Remembrance, the Paper was of these Dimensions ; and that he remembers to have observed in the Receipt at the Foot of it, as he thinks, two Letters like Print, which he thinks were either G. T. or T. T. but which of the two he does remember. And being interrogate upon the Part of the Pursuers, depones, That he thinks there was very little of the Paper free from Writing. And being further interrogate, depones, He did not see Mr. *Thomson* after he had parted with him at *Robert Ferrier's*, as is set furth in the former Oath, for some Months ; but then he saw him on the following Occasion : He had accidentally told *William Brough* of his having carried a Truss to Mr. *Thomson*, in the Manner explained in the former Oath, and thereupon Mr. *Brough* being anxious to find out the Truth in that Matter, upon the Deponent's telling him, that he would know Mr. *Thomson* if he saw him again, was desired by Mr. *Brough* to go up to *Edinburgh*, and wait at the Cross betwixt Twelve and One, and see if he could find out Mr. *Thomson*, who, as Mr. *Brough* said, was to be there at that Time : That the Deponent accordingly came up to *Edinburgh*, and stood at the Cross for sometime, when he saw the Gentleman who he had taken for Mr. *Thomson*, and who had employed him to get the Truss from Mr. *Brough*, as aforesaid ; and was positive, and is still positive, that Mr. *Thomson* the Defender, whom he pointed out in Presence of the Ordinary at the Time of deponing, is the very Person who employed him, and who got the Truss brought out of *William Brough's*. Depones, That *William Brough* did not come to *Edinburgh* along with the Deponent, neither did he give him any Directions how to find out Mr. *Thomson* by Description or otherways, further than to wait at the Cross ; and the Deponent did not see *William Brough* till after he had seen Mr. *Thomson*

son as above: That the Deponent went to *Leith* with a Burden after he had seen Mr. *Thomson*, and returned to *Edinburgh* in the Afternoon on an Errand, when he met Mr. *Brough*, and told him that he had seen Mr. *Thomson*, whereupon Mr. *Brough* said that he was going to meet with Mr. *Thomson* at a House in the *Grass-market*, and desired the Deponent to go along, that he might again see *Thomson*: That the Deponent accordingly went, and came to *Sharp's* public House, where he saw Mr. *Thomson* just going to mount his Horse, upon which the Deponent told Mr. *Brough* there was the Man; and thereupon left Mr. *Brough*, and went about the Business he had to do in the Town. And being further interrogate, depones, He does not remember whether Mr. *Thomson* had any Servant with him or not; or if there was any more Horses then drawn out, than one. And being further interrogate, depones, That when Mr. *Thomson* employed him to go for the Truss, as above, he had on him a whitish-coloured big Coat. And depones, That he got a Shilling from Mr. *Brough*, for coming with him up to *Ferrier's* to enquire about the Truss, and that besides he got a Drink and a Dram there along with others, which Mr. *Brough* paid. And being further interrogate, depones, That he had no Conversation with *Fergus Ferguson*, Ostler once to *Robert Ferrier*, concerning the Subject of the said Truss, excepting that Day wherein at Mr. *Brough's* Desire he came along with him to Mr. *Ferrier's*, though he has spoke to *Ferguson* in common conversation and other Subjects frequently. And being further interrogate, depones, That the Day he got the Truss from *William Brough*, there was a Race run at *Leith* as the Deponent thinks, and that he was to have been employed that Day in carrying Blubber from one of the Whale Ships to the Boiling-house: That some of the Company to which he belongs were so employed that Day; and that in the Afternoon, after the Deponent had returned from *Robert Ferrier's*, he himself wrought some at that Business, *Causa scientie patet, &c.* And depones, he cannot write, though he can read Print. And being further interrogate, depones, That he remembers the Truss was marked with a big G. and T. and after the T. the rest of the Name *Thomson* was added in Letters like Print also. And depones, Before the Deponent carried the Truss from *Leith* to *Robert Ferrier's*, he put it in a Pock of his own, out of which he took it when he laid it down in Mr. *Ferrier's*.

James

James Elderstone, Cordiner or Cobler in *Leith*, depones, That no Person has spoke to him concerning the subject of the present Process, since he was examined formerly on Commission from the Lords, and particularly, that Mr. *Brough* never spoke to him on the said Subject. Depones, That *John Bain* Porter brought the Parcel of Goods to his Shop, mentioned in his former Oath, on a Day when there was a Race, but which of the Race Days it was, he cannot say; and being desired by the Ordinary to point out the Person in the Company, who he took to be Mr. *Thomson* the Defender, he pointed him out. And depones, That he is positive that Mr. *Thomson* the Defender is the Person who came to his Shop along with *Bain* the Porter. And being interrogate how he comes to be more positive now than when he emitted his former Oath, depones, That the Reason of this is, by having seen him oftner; for that when examined formerly on Commission, he took but an overly View of Mr. *Thomson*, but now, on looking to him with Exactness, he is positive that he is the Person who came along with *Bain*. And being interrogate if he knew any other Person in the Room besides *George Thomson*, there being present at the Time ten besides Mr. *Thomson*, and the Deponent, depones, That he knows *William Brough*, and pointed out two other Gentlemen, who he said he believed had been present when he formerly deponed, viz. Mr. *Elliot*, Agent for the Pursuers, and Mr. *Buchan*, Clerk to Mr. *Williamson* Lawyer, but knew none of the rest. And depones, That he had never seen the two Gentlemen above mentioned before he was first examined, nor did he see them again till this Day, when he remembered them without being told who they were. And being further interrogate upon the Part of the Defender, depones, That upon the very first Sight that he got of the Defender this Day, he was positive, as he still is, that he is the Person who came along with *Bain* to his Shop, and got the Truss. And his former Oath being read over to him, depones, The same is taken down as it was emitted by him. *Causa scientie patet, &c.* And further depones, That he has not seen the Defender since he emitted his former Deposition till this very Day.

Fergus Ferguson, Ostler to *James Boyd* Stabler in *Canongate*, depones, That he is unmarried. And depones, That he has had no Conversation with any of the Parties in this Cause, nor with *William Brough*, nor with any of their Agents, on the Subject of the present Process,

Process, since he was formerly examined; neither had he any Conversation with any of them, previous to his former Examination, except as is mentioned in his former Oath. And being interrogate particularly concerning the Facts mentioned in his former Oath, and some other Particulars, both before reading over his former Oath to him, and after it was read over, he gave the same Account in Answer to both these Examinations, as is set furth in his former Oath, with the following Alterations and Additions, particularly, That the Gentleman who he at his former Examination verily believed to be the Defender Mr. *Thomson*, and still believes to have been Mr. *Thomson*, who is present at this Examination, did come to the House of Mr. *Ferrier* his then Master, the Day before the Truss of Goods was carried from Mr. *Ferrier*'s, and left his Horse in Mr. *Ferrier*'s Stable: That the Deponent did not see the Defender that Day, but saw his Horse in the Stable; and that to the best of his Knowledge his Mistress told him the Horse belonged to a Gentleman who came from *Falkirk*: That the Horse staid but a short Time in the Stable, and the Deponent did not see him taken out, but heard his Master had given the Horse Oats; and he is positive the Horse did not stay all Night in the Stable. Depones, That about six o'Clock in the Afternoon of that Day, so far as the Deponent can remember, *John Bain* the Porter, a Witness formerly examined, brought up a Parcel of Goods, as is mentioned in his preceeding Oath; and that next Day about seven o'Clock in the Morning, a Gentleman, who the Deponent verily believes to be the Defender in this Cause, came to Mr. *Ferrier*'s, and desired the Goods might be wrapt up in a Pack-sheet, which Mrs. *Ferrier* brought, with Cords for the Purpose, whereupon the Deponent packed it up. Depones, That he had not seen the Defender till the Morning, when he called to have the Goods packed as above, as just now mentioned, but that he was told by his Master or his Mistress, to the best of his Remembrance, that that was the *Falkirk* Gentleman whose Horse had been for a while in the Stable the Day before, and it was from this Account he got, that he has said above, the Defender was in Mr. *Ferrier*'s the Day preceeding. Depones, That his Master and Mistress did not seem to be acquainted with Mr. *Thomson*; and he heard them say that he was a Stranger to them. Depones, That the Person who he believes to be the Defender, wrote a Direction on a Card, to be put upon the Truss, which the Deponent sewed on in

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Presence of the Defender, who gave him Three-pence and a Drink and a Dram for his Trouble. Depones, That after the Deponent had assisted in getting the Truss put upon the Horse and Carr Saddle, in Manner mentioned in his preceeding Oath, he told his Mistress that he had done so, who quarrelled him for so doing, because she said the Gentleman had ordered the Truss to be laid up in the Ware-house where the *Newcastle* Carriers Goods ly, to be sent to *Newcastle*, and as they had been taken out to go away in a different Method, she therefore was offended, to which the Deponent answered, that he knew it was the same Gentleman who had caused him pack them up who had again called for them, and carried them off; and the Deponent's Mistress having quarrelled him on this Occasion, made him think more particularly of the Gentleman, and to remember his Looks. And being further interrogate, depones, That *John Bain* above mentioned has been of the Deponent's Acquaintance these good many Years; and that when *Bain* brought the Truss to Mr. *Ferrier's* House the Day before it was sent off from thence, he told the Deponent it belonged to a Gentleman who had paid him handsomely for the Carriage; and they two drunk a Bottle of Ale together, which *Bain* paid, who then went off, and the Deponent did not see him again at Mr. *Ferrier's* House. And being specially interrogate upon the Part of the Pursuers, depones, That he is positive he did not see the Defender and *Bain* together: That *Bain* came to his Master's the Night before he saw Mr. *Thomson*, and that he did not see *Bain* with Mr. *Thomson* the Day after; and the Deponent persists in this Account of the Matter, after hearing his former Oath read, and specially concerning this Article, and says that the former Oath has not been properly taken down, it being impossible that he could swear, that he had seen the Defender and *Bain* together; and further depones, That he cannot say what Mark was upon the Truss when it came into his Master's House, or if there was any; neither can he say what Address was put upon it by the Defender, for the Deponent can neither read nor write. *Causa scientie patet.*

And the Defender having caused summond *William Brough* Merchant in *Leith*, as a Haver, to exhibit his Books and other Writings relating to the Question in Issue, he appeared in Presence of the Lord *Auchinleck*, when his Lordship thought proper to take the Declaration of the said *William Brough*, with regard to sundry Particulars that had cast up in the present Process; and he being examined, emitted the following Declaration:

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The said *William Brough* being interrogate, declared as follows: That he has had sundry Meetings with *Cornelius Elliot* Writer in *Edinburgh*, and with *Robert Reid* Writer to the Signet, Agents for the Pursuers Mr. *Brough* and *Wade*, and once met with Mr. *Brough* and *Wade's* Lawyers, in order to give what Assistance he could to the Pursuers in the present Action. And being specially interrogate, whether or not he had employed *Robert Reid* Writer to the Signet, as Agent for him the Declarant in carrying on the present Process, in Name of *Brough* and *Wade* against Mr. *Thomson*, declares, That he did employ him as his Agent in the same Affair, the Declarant having considered that he had an Interest himself in the Question; and declares he spoke to Mr. *Reid*, and advised with him concerning the Process, before the Process was commenced, and desired Mr. *Reid* to advert that the said Process was properly conducted. Declares, That Mr. *Reid* told him from Time to Time, that he did advert to the said Process: That he knows indeed that Mr. *Reid* was not present when the former Proof was taken, which was owing to Mr. *Reid's* having been at that Time out of Town, the Declarant having sent for Mr. *Reid* to be present, and having got for Answer, that Mr. *Reid* was not in Town. And being further specially interrogate, declares, That by his Day-Book he sees, that he employed Mr. *Reid* as Agent in this Affair upon *Wednesday* the 5th of *December* 1753. Declares, That when the former Proof was taken, the Commissioner refused to admit him as a Witness for *Brough* and *Wade*, at least Mr. *Elliot*, Agent for *Brough* and *Wade*, who had cited him, reported so to the Declarant: That the Declarant thereupon desired to be present as a Party at taking the Proof, but this was refused him. And being further interrogate, declares, That he is acquainted with *John Bain* Porter in *Leith*: That he has known him for several Years, but for how many, is not positive; and that 'till about the Time of the Enquiry concerning the Goods, the Subject of the present Question, he did not know *Bain's* Name, only knew him to be a Porter in *Leith*: That *Bain* was not a Porter whom the Declarant used to employ, *Bain* being of that Company called *Graham's*, and the Declarant employs the Porters that are called *Telfer's* Company, when they can be got; and does not remember to have at any Time to have employed *Bain*, though it is possible he may have employed him in a single Lift at a Time, but which he does not remember. Declares, That upon the first Day of the *Leith* Races, by which

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he means the first Day the Constables were cited to attend at the Stoops, the Declarant, who was then a Constable, was cited to attend, but being sick, could not attend; and that the Declarant fell sick the Night before: That about Eight o'Clock in the Morning of the said Race Day, *Mary Brown*, then the Declarant's Servant Maid, came into the Declarant's Room, and told him that a Porter was calling for a Truss to a Gentleman, and gave the Declarant a Paper which the Porter, as he said, had brought with him, which the Declarant looked at, and saw it was the Receipt by Captain *George Wilson* for the Truss belonging to Mr. *Thomson* the Defender: That the Declarant is well acquainted with the Hand Writing of Captain *Wilson*, and verily believes the said Receipt was duly subscribed by the Hand of the said Captain *George Wilson*: That the Declarant bid his Maid tell the Porter to acquaint the Gentleman, who the Declarant believed to be Mr. *Thomson*, that the Declarant had the Truss in his Cellar, and so gave her back the Shipmaster's Receipt to return to the Porter: That soon thereafter the Maid came to him again and told, that the Porter was returned, and wanted to have the Truss, and had brought half a Guinea to pay for the Charges: That the Declarant reflecting, that when he had been with Mr. *Thomson* settling Accompts, he had got an Indorsation to a Bill from Mr. *Thomson*, and uncertain how Accompts stood betwixt them, whether he was Debitor or Creditor to Mr. *Thomson*, and his Indisposition making him unfit to get out of Bed and search his Books, he therefore declined taking the half Guinea, and desired the Maid to restore it to the Porter, and to deliver him the Truss, and bid him tell Mr. *Thomson* to come and speak to the Declarant; and declares, that the Maid told him, that the Porter had said, that Mr. *Thomson* (naming him) was at that Time upon the Shore. Declares, That he directed the Maid where the Truss lay in the Cellar, and the Direction upon it was in big printed Letters, which he knows the Maid could read. Declares, That he does not know where the aforesaid *Mary Brown* now is: That she left his Service at *Martinmas* 1753, and went to *Fife*: That he believes she has a Sister who is a Servant in *Leith*, but with whom he does not know; but has Reason to believe that Mrs. *Wood*, Wife to *Hugh Wood* Merchant in *Leith*, who was the Person that recommended *Mary Brown* to the Declarant for a Servant, can give Account of her. Declares, His Sickness aforesaid, which proceeded from a Cold, lasted three or four Days; and that the other

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Constables knew of the Declarant's Indisposition. Declares, That the Room where he lay when the Porter called as above, is at the innermost End of the House; and as he does not know whether the Porter came further than the Kitchen, which is at the other End of the House, he cannot say if or not the Porter could hear what he the Declarant said to the Maid, and thinks, that tho' the Porter had been in the Kitchen, if the Declarant's Room Door was left open, the Porter might have heard his Voice. Declares, That Mr. *Thomson* did not call, which the Declarant imputed to his being detained by other Business. Declares, That upon Mr. *Thomson's* thereafter making a Demand for the Truss, the Porter's having got it, as aforesaid, entirely escaped the Declarant's Memory; whereupon he set himself to enquire at the different Persons who used to be employed in carrying Goods for him, as the Declarant had found it was not in his own Custody; and the Declarant came to suspect it had been sent by *Sharp's* Waggon, and thereupon wrote the Letter of the 29th of *September* 1753, and some others produced, in the same Strain, down to the 13th of *October*. Declares, That some Time after the 13th of *October*, *James Crawford* Porter in *Edinburgh* hearing that the Declarant could not get Account of a Truss of Goods sent to *Falkirk*, came to the Declarant and told him, that he had been employed by the Declarant to deliver sundry Trusses to one *Andrew Gardiner* Carrier in *Falkirk*, and that possibly one of these might be what was wanted: That upon this the Declarant wrote the Letter of the 20th of *October*, and of the 3d of *November*, both in the Year 1753; and that tho' this last Letter is so worded as to make it appear that the Declarant had made the Discovery from his Books, yet in fact the Discovery proceeded only from what *Crawford* had said, for his Books contained no such Particular. Declares, That while in Search of the Truss as aforesaid, he enquired particularly at *Mary Brown* his Servant Maid, if she knew any Thing about the Truss, who told him at that Time, that she remembered nothing about it. Declares, That upon the 15th of *November* 1753, the Declarant being positive as to the Day, because of an Entry in his Day Book produced, relative to the Particular which he is now to explain, entered at the Time, the Declarant being in his Cellar, drawing off some Porter, *John Bain* above mentioned came into the Cellar, and asked the Declarant if he would give him any Goods to carry to *Edinburgh*, and wished that he would give him as good a Carriage as he had

had last got out of his Cellar: That on the Declarant's asking what that was, being answered it was a Truss for one Mr. *Thomson*; who had given him a Shilling for carrying it to *Edinburgh*; whereupon the Declarant asked him if he knew to what Place; and he said he did not know the People, but he believed he would know the House: Upon this he carried the Declarant to the House of *Robert Ferrier* Stabler in *Bristol*, where the Declarant enquired at Mr. *Ferrier*, his Wife and the Officer, and took down in Writing at the Time, the Account they gave him of the Matter, as is mentioned in his Book aforesaid, which Account he wrote down in their Presence, and read over to them. Declares, That *Bain* having told him that the Truss had been left in *James Elderstone* Cordiner's Shop, and that the Defender, Mr. *Thomson*, had come there when he, *Bain*, carried off the Truss to Mr. *Ferrier's*, the Declarant examined *Elderstone* how far he remembered any thing of that Affair; that *Elderstone* said he remembered it well, and though he did not know the Gentleman at that Time, believed he would know him again if he saw him: That upon this, the Declarant, on the 8th of *January* 1754, as marked in his Book aforesaid, resolved to find out how far *Elderstone* would know Mr. *Thomson*, for which he had then a good Opportunity, Mr. *Thomson* having been then in *Leith*, and told the Declarant the Places he was going to at particular Hours, and especially that he was going to one Mr. *Bruce's* House in the *Kirk-gate*: That the Declarant upon this went to *Elderstone*, and told him that *Thomson* was in Town, and that he had Reason to believe that he would pass alongst the *Kirk-gate*, and desired him to see if he could discover the Person: That the Declarant left *Elderstone* standing in the Street by himself, and went into a House: That a few Minutes thereafter *Elderstone* came into the House to the Declarant, and told him he had seen the Gentleman pass, and brought the Declarant out, and pointed out the Gentleman, who the Declarant saw was Mr. *Thomson*: That Mr. *Thomson* at the Time, as the Declarant thinks, had on a Pair of Spring Hose for riding with, and that the Declarant had given no Description of Mr. *Thomson* to *Elderstone*, neither had he told him that he had Boots or Hose on. Declares, That he had no Acquaintance of *Elderstone* until the Time above mentioned; and that he has had no Conversation either with him or with *John Bain* since the Day they were examined formerly on Commission from the Lords; neither did he employ any other Person to converse with them. Declares,

clares, That the Declarant's Mother died the 12th of *September* 1753, and that she was on her Death Bed for about a Month. And being further interrogate, declares, That after the Declarant had got his Information from *Bain* as above, he told *Mary Brown* what the Porter had said; and that she thereupon told the Declarant, that she likewise then came to remember the Fact: That the Declarant did not make any Enquiry after *Mary Brown*, having heard it reported at that Time that she was dead; and that she left the Declarant's Service either 11th or 12th of *November*, but cannot be positive as to the Day. And declares all this to be Truth.

Thereafter the said *William Brough* being called as a Haver, appeared and deponed as in an Exhibition, as follows:

William Brough Merchant in *Leith*, aged 30 Years, unmarried, depones and exhibites a full Accompt from his Ledger of the sundry Pieces of Business which he had managed for Mr. *Thomson*, beginning the 18th of *January* 1749, and ending the 9th of *December* 1752, which Accompt or Excerpt from his Book foresaid is marked by his the Deponent and the Lord Ordinary's Subscriptions, as referred to in this Oath; and depones the said Excerpt was made at the Sight of Mr. *Forrester*, Agent for Mr. *Thomson*, who perused the Deponent's Books, and compared the said Excerpt with them, and that the said Excerpt contains all that is entered in the said Ledger relative to his Transactions with Mr. *Thomson*; and the Deponent having also produced his Day Book, or Memorandum Book, beginning the 10th of *March*, and ending the 6th of *September*, both in the Year 1753, pointed out in the said Book two Memorandums of Goods received by him for, and sent by him to Mr. *Thomson* the Defender; the first of the 29th of *June*, entered in these Words, *per John Beatson, G. Thomson, Falkirk*, a Truss $\frac{1}{2}$, which Figure denotes one half Barrel Bulk, and which Truss just now mentioned by another Entry in the said Book, of the 16th of *July*, is marked to have been sent by *Sharp's* Waggon to *George Thomson, Falkirk*, and is described there as a Bale; and pointed out a second Entry in the said Book, of the 6th of *August* 1753, in these Words, Goods *per George Wilson* from *London*, *George Thomson* a Truss 13th sent by Waggon 1.--And being interrogate what the Meaning of these Figures are, depones, That by 13th he meant the 13th of that Month of *August*, to denote the Time when the said Truss was sent to Mr. *Thomson*, and by the 1st Figure he meant

meant one Barrel Bulk. And being interrogate at what Time he marked in the said Memorandum Book 13th sent by *Waggon*, depones, That he cannot precisely remember the Time, but that to the best of his Remembrance it was after Mr. *Thomson* had corresponded with him in relation to the Goods in Question, and had been desiring the Deponent to make them furthcoming, and is positive it was entered there after many other Articles posterior in Date to the 6th of *August* had been filled up in the Book; for that he entered the several Transactions of the Date they happened, and this of sending the Truss to Mr. *Thomson* being marked as of the 13th, was therefore posterior as to the Time of marking to other Particulars, though stated after it in the Book: That when the Deponent says he entered the Transactions regularly of the Date they happened, he meant only, that the Goods he received were so marked, but that sometimes he was inaccurate in marking the Goods he sent away, they being frequently sent in a Hurry; as also exhibites another Memorandum or Day Book, beginning the 6th of *September*, and ending the 31st of *January* 1754; and depones he has no other Day Book during that Period; and further exhibits five Missives from Mr. *Thomson* to him the Deponent, all in the Year 1750; and depones, that he has no more Missives except these now produced, and what were formerly produced, at least the Deponent has found no more; but if he finds any more he shall produce them. And this is Truth as he shall answer to God.

The Pursuers, in Support of their Condescendence, adduced the following Witnesses, who deposed as follows:

Alexander Brown Merchant in *Edinburgh*, depones, That many of the Invoices of *London* Goods sent to the Deponent have the Ship-master's Receipt prefix'd at the Top of the Letter, but that sometimes the Ship-master's Receipt is wrote on a separate Piece of Paper, and transmitted along with the Invoice; but the more general Practice is to prefix the Ship-master's Receipts: That he knows Messieurs *Brough* and *Wade* Pursuers, and that, so far as he had Dealings with them, their common Practice was to prefix the Ship-master's Receipt, but cannot be positive but that sometimes the Pursuers may have sent the Ship-master's Receipt on a separate Piece of Paper: That when the Ship-master's Receipt is prefixed, it is not common, in the Letter subjoined to the Invoice, to take Notice of the Ship, or Ship-master's Name, as it is not necessary; but the Letter subjoined to the Invoice sometimes

sometimes notices that the Ship-master's Receipt is prefixt: That the Pursuers, to the best of his Knowledge, are distinct Merchants, and he believes if the Ship-master's Receipt was not prefix'd, that they would not omit, in the Letter subjoined to the Invoice, to mention the Ship, and Ship-master's Name with whom the Goods was sent; because, in the Deponent's Opinion, it would be a Blunder to omit it. And being interrogate, whether or not, when the Writing subjoined to the Invoice is carried over to the second Page, there is a Blank left at the Top of the second Page, opposite to the Ship-master's Receipt, in order that the Receipt may be cut off and delivered to the Ship-master, depones, That he cannot be positive whether that is always done, but that he would do so himself, as being most regular, that the Receipt may be cut off and delivered to the Ship-master, without spoiling the Writing. And further depones, That he knows that Ship-masters will deliver the Goods committed to their Charge, without calling for their Receipt; and at deponing exhibited an Invoice from the Pursuers, with the Ship-master's Receipt prefix'd, and the same is marked by the Deponent and Commissioner at deponing. *Causa scientie patet, &c.*

Andrew Simpson Merchant, and late Baillie of *Edinburgh*, depones conform to the preceeding Witness *in omnibus*, and adds, that when the Ship-master's Receipt is on a separate Piece of Paper, it is the general, and, he thinks, the constant Practice, in the Letter of Advice sent along with the Invoice, to notice, that the Ship-master's Receipt is inclosed, it being the Practice of the *London* Merchants either to prefix the Ship-master's Receipt, or to transmit the same along with the Letter of Advice. Depones, That in *August* or *September* last, *Mr. Wade*, one of the Pursuers, was in this Country; and the Deponent has heard him say, that he was positive the Ship-master's Receipt was prefixed to the Invoice and Letter sent to *George Thomson*, with the Goods in Question: That within these 18 Months, *Mr. Brough*, the other Pursuer, was likewise in this Country, and the Deponent thinks he also informed him to the same Purpose; but upon Recollection he cannot positively say that both the Pursuers gave him the above Information, but he is positive that one or other of them, if not both, did so, and at deponing exhibited seven several Invoices of Goods from the Pursuers, which are marked by the Deponent and Commissioners. *Causa scientie patet, &c.*

John

John Schuldham, Merchant in *London*, depones, That he was Clerk to Messieurs *Brough* and *Wade* Pursuers in *July* 1753: That it was the common Practice of their House, and he does not remember a contrary Instance, that when they shipt Goods to be sent to any of their Correspondents in *Scotland*, they took the Ship-master's Receipt on the Top of a Sheet of Paper, and subjoined an Invoice of the Goods sent, with a Letter of Advice to their Correspondent. Depones, That if the Letter exceeded one Page, there was a Blank left on the Top of the second Page, so that the Ship-master's Receipt might be taken off without hurting any Part of the Writing. Depones, That having carefully looked at and considered the Invoice and Letter of Advice from Messieurs *Brough* and *Wade*, dated the 21st of *July* 1753, the said Invoice and Letter is wrote with the Deponent's own Hand; and, to the best of the Deponent's Belief, there was a Receipt on the Top of the Sheet of Paper whereon the said Invoice and Letter are wrote, and on the first Page thereof, which was signed by the Ship-master or other Person who received the said Goods, in order to be transported to *Scotland*; and the Reason of the Deponent's Belief is, that the Sheet of Paper on which the said Invoice and Letter are wrote is manifestly incomplete, and the Deponent was in use to fold the Letters in such a Manner, as that the upper Part of the Paper would have folded over a great deal further than the Letter now produced and shewn to him does. And further depones, That in case the Ship-master's Receipt had not been at the Top of the first Page of the said Invoice and Letter, the Deponent would not have begun the said Invoice and Letter at such a Distance from the Top of the first Page, as he did on that Occasion, as appears from the said Invoice and Letter. *Causa scientiæ patet, &c.*

David Miller Porter depones, That he has been in use to serve Messieurs *Brough* and *Wade* as a Porter constantly for two Years past, and occasionally for two Years before that Time, Depones, That it has been the constant Practice of their House, when they ship Goods for *Scotland*, to take the Ship-master, or other Person's Receipt, to whom the Goods are delivered, on the Top of the first Page of a full Sheet of Paper, and that the Receipt is always wrote by the Ship-master or the Person who receives the Goods, and the Goods are never left or delivered till such Receipt is signed. And depones, That he has been employed on a great Number of Occasions to ship Goods for

Messieurs *Brough* and *Wade*, and never took a Receipt in a different Manner than he has above mentioned. Depones, That he was not the Person who delivered the Goods mentioned in the Act and Commission, though he was sometimes employed by Messieurs *Brough* and *Wade* at that Time, and that the Porter who delivered the said Goods, and was commonly employed in the House at the Time, is since dead. *Causa scientiæ patet, &c.*

Isaac Steele, Shopman or Servant to Mr. *Brough*, depones, That he has served the said Messieurs *Brough* and *Wade* for about three Quarters of a Year, and that it has been the constant Practice of the House, when Goods are shipt for *Scotland*, to take from the Ship-master, or other Person who receives the Goods, a Receipt on the Top of a blank Sheet of Paper, to which there is afterwards subjoined an Invoice and Letter of Advice, which is sent to their Correspondent for whose Behoof the Goods are shipt, and that he never knew an Instance to the contrary. *Causa scientiæ patet, &c.*

George Wilson Ship-master in *Leith*, a Witness adduced for the Pursuer, depones, That in *July* and *August* 1753, the Deponent was Master of the Ship called *The John and Margaret of Leith*: That he cannot remember the particular Parcels put aboard his Vessel, when he left *London* that Year, but from his Books he observes, that on the 21st Day of *July* said Year, there was a Truss shipped, marked *G. Thomson*: That it is the Custom for the Master of the Ship to grant Receipts for the several Parcels of Goods put aboard, and when they do so, they mark at the End of the Line the Letter *R.* to signify that a Receipt was granted, and he observes in his Books, which he produced to the Commissioners, that the Letter *R.* is put down at the End of the Line, which runs thus, *G. Thomson, 1 Truss, Mr. Bruff, --R.* and delivered his Book to the Clerk, to put in the Process, the same being marked by the Deponent and Commissioners: That he does not know the Pursuers; but depones, that at *London* the Name of Mr. *Brough* is pronounced *Bruff*, but knows not by whom the Goods were shipt, further than by his Books, which, as to his particular, is of the Hand-writing of *Robert Wilkie*, at that Time Master, and now, as the Deponent believes, aboard his Majesty's Fleet: Depones, That he has known Mr. *Brough* Factor at *Leith* for about these eight Years, and has always heard a good Character of him: And being further interrogate, depones, That after Receipts are granted by Masters

Masters of Ships, for Parcels put aboard, it is frequently the Custom to bring these Receipts to the Master upon Change, and takes his Receipt for the same; and this is sometimes done at the Top of an Invoice, or of a Sheet of clean Paper, and the deponent has frequently done so himself, but cannot recollect that he granted any Receipt for the Parcel of Goods in Question; but from the Mark of the Letter R in his Book, believes that a Receipt was granted. *Causa scientie patet, &c.*

William Oliphant Bulker in *Leith* (a Witness adduced for both Parties) depones, That he has known Mr. *Brough* Factor at *Leith* for several Years, and he is habite and repute an honest Man, and the Deponent has had Dealings with him, and never observed any Thing but Honesty: And being interrogate, if he remembers any Thing relative to the delivering a Truss of Goods, marked *G. Thomson*, to the said Mr. *Brough*, which, anno 1753, had been taken out of the Ship, the *John and Margaret of Leith*? depones, That he cannot remember further than what is marked in his Book, which he exhibited, and the same is marked by the Deponent and Commissioners, and contains this Line, *G. Thomson, 1. Truss*,—1. which last Figure signifies one Barrel Bulk, the Book containing this Article as taken out of the Ship the *John and Margaret*, the 6th Day of *August* 1753, and delivered to Mr. *Brough* about that Time: And being interrogate, whether *John Bain Porter* at *Leith* came to the Deponent enquiring after the said Parcel of Goods, or if Mr. *Brough* the Factor had done so, depones, he does not remember that any of them ever made such Enquiry: That so many People came to him asking for Goods, sometimes a Dozen a Day, that he cannot remember such Messages for Weeks, far less for Years. *Causa scientie patet, &c.* And being further interrogate as to the Practice at *London*, with regard to the Transmission of the Ship-master's Receipts, depones, That when these Receipts are sent to *Scotland*, they are commonly prefixt to the Invoice, but sometimes they are on Papers distinct and separate from the Invoice: That several Merchants at *London* are in Use to fill up their Receipts granted for Goods put ashboard, and not to transmit them at all, unless some Emergent make it necessary: That Goods are commonly delivered from Shipboard at *Leith* without calling for any Receipts, and that in the common Course of collecting Freights, there is not a Receipt of five hundred called for, or got up. *Causa scientie,*

scientie, he had Dealings for some Years as a Merchant in *Edinburgh*, and has been as Bulker at *Leith* these five Years past.

Peter Fyfe, Stabler in the *Grass-market*, a Witness adduced for the Pursuers, depones, that to the best of his Remembrance, the *Leith Races* in the Year 1753 were in the Month of *August*, but that, so far as he can recollect, *George Thomson* the Defender was not in his House about that Time, though he cannot positively say that he was not, nor does he remember to have seen him in *Edinburgh* about that Period: And being further interrogate, depones, That some Time after the said Month of *August*, but how long after he does not remember, one Mr. *Brough* at *Leith*, a Merchant or Factor, came to the Deponent's House, and having, after enquiring at the Deponent and his Family, called for the Hostler *James MacBryde* into the Company where Mr. *Brough* was, and having asked the Hostler, whether or not he remembered that *George Thomson* the Defender was in his Master's House about the Time of the *Leith Races* 1753 Years? depones, That the Hostler answered, that Mr. *Thomson* was in the Deponent's House about that Time: That the said Hostler left the Deponent's Service in the Year 1754, and believes that he now serves *Charles Begbie* at *Linton Bridge*: That the said Hostler served the Deponent faithfully, so far as he knows, and believes that he is a very honest Man: And further depones, That the Reason why he cannot remember whether Mr. *Thomson* was or was not in his House about the Time abovementioned is, that when Customers come to his House only for a Night or two, it is not his Practice to book them, and that Mr. *Thomson* never staid in his House above two or three Nights at a Time: That he has sometimes seen Mr. *Thomson* ride a grey, and sometimes a bay Horse, but does not remember to have seen him that Year, but does not doubt but he might, as he sometimes stabled with the Deponent, and sometimes not. *Causa scientiæ patet, &c.*

James MacBryde, Servant to *Andrew Philips* Vintner at *Beltonfoord* (adduced for the Pursuers) depones, That about the *Martinmas*, when he left Mr. *Fyfe's* Service, which he did in the Year 1754, but is not positive if it was that Year he left him, or the Year preceeding, but thinks it was in the Year 1753, a Gentleman, whom he does not know, came to the Deponent when in his Master's Stable, and asked whether or not *George Thomson* Merchant in *Falkirk* had been in his Master's House some time before, and desired the Deponent to think of

of the Time: That the Deponent answered, That to the best of his Remembrance, *George Thomson* had been in his Master's House about the Time of the *Leith* Races preceeding, but could not be positive as to the Week or the Day of the Week, but thinks it was that Week, but was not positive: That his Master, *Peter Fife*, came along with the Gentleman to the Stable, and was present there when this Conversation happened; and, upon Recollection, now depones, That these are the Facts to the best of his Remembrance: And being interrogate, depones, That *George Thomson* staid more than one Night, but how long the Deponent cannot recollect: That being further interrogate as to Mr. *Thomson's* Dress, at first deponed he could not remember, but, upon Recollection, depones, he thinks he was drest in blue Cloaths, and a fair Wig; and thinks the Colour of his Horse was black, to the best of his Knowledge: That the Deponent, so far as he can remember, drew *George Thomson's* Horse, but cannot be positive, and thinks he went towards the *West-port* when he set out, but cannot be positive: And depones, That he does not remember whether or not *George Thomson* had a great Coat when he came to his Master's House, and when he left it: And being further interrogate, depones, That *George Thomson* frequently put up at his Master's House, and that he has sometimes seen him have a whitish coloured great Coat, and thinks he has seen him ride a grey Horse, but is not positive. *Causa scientie patet.* And being further interrogate, whether or not, when the above Conversation happened in the Stable, he was not also called up to his Master's House, and questioned about *George Thomson* before some Company, depones, That he thinks he was not; but that the Questions were put to him in the Stable as above: That he heard that some of the other Servants were questioned in the House; but that his Master at that Time had no other Hostler.

And the Defender, in order to prove his Condescendence, adduced the following Witnesses, who deponed as follows, viz.

Charles Lord Elphinstone depones, That some time in the Month of *August* 1754, he came into the Shop of *George Thomson* Merchant in *Falkirk*, in which Shop there was an *English* Gentleman, which Mr. *Thomson* informed him was one Mr. *Wade* Merchant in *London*; and at that Time there happened to be a Dispute betwixt him and the said Mr. *Thomson*, relating to some Goods which had been sent from *London* by the said *Wade* and Company to the said *George Thomson*,

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and

and which were a-missing, and after they had spoke a little about that Matter, the said *George Thomson* said that he would refer the Affair to the Deponent, and narrated that he had given a Commission to the said *Wade* and Company for a Parcel of Goods, which he had ordered them to send with the first *Borrowstounness* Ship, to the Care of *Charles Addison* Merchant there; but that the said Goods were not sent by any *Borrowstounness* Ship; nor when he got the Invoice, did he receive any Receipt of the Master of the Ship with whom they were sent; so that the said *George Thomson* did not know where to call for them, nor did they ever come to his Hand: All which Facts (except as to the Goods not coming to Hand) he thinks the said Mr. *Wade* acknowledged, or at least did not deny; and upon which the Deponent gave it as his Opinion, that it would be very hard to make Mr. *Thomson* liable in that Case; and gave some similar Instances that had been decided before the Court of Admiralty to confirm his Opinion. Afterwards Mr. *Thomson* invited Mr. *Wade* to dine with the Deponent and him; but he excused himself as he had Business. And depones, That he has known and dealt with the said Mr. *Thomson* for 20 Years by-past, and had very frequently Occasion to see him, and never remembers to see him wear any Cloaths but either a dark Blue or a Parson Grey Colour. *Causa scientie patet.*

Lord ELPHINSTONE'S Letter to Mr. *George Thomson*
Merchant in *Falkirk*, 5th February 1757.

SIR,

Elphinstone, 5th February 1757.

When your Servant arrived with your Letter of *Thursday* last's Date, relative to a particular Circumstance of the Invoice of the Goods in question betwixt you and Mr. *Wade*, being produced in the Shop, the Time I was in Argument with Mr. *Wade*:

The Question was never asked at me by the Commissioners or you. Had the Question been put, these Words, or to that Effect, would have been added to my Deposition, emitted before *Walter Little* of *Liberton* and *Thomas Thomson* of *Donivan*, Esquires, Commissioners appointed for that Effect, which you have on a Paper inclosed, and can safely say upon my Honour, and depone before all the Judges upon Earth, that
what

what is contained in the inclosed Paper is nothing but the Truth, so far as my Memory will serve me.

I am your humble Servant,

ELPHINSTONE.

Addressed on the Back thus: To Mr. George Thomson Merchant Falkirk.

Lord Elphinstone's Declaration, 5th February 1757.

Declares Lord *Elphinstone*, That the very Day he was in *George Thomson's* Shop in *Falkirk*, that after the short Conversation he (Lord *Elphinstone*) had with Mr. *Wade* upon the Goods that were a-missing, he retired to the East-end of the Shop, sat down at the Fire-place before the Counter, where *George Thomson* left Mr. *Wade*, with a Parchment Wrapper of whitish greasy Leather, with a Paper upon the Top of it, that Bundle, which *George Thomson* told me was the Invoice of the Goods so long a-missing.—Upon which I called over to Mr. *Wade*, and desired he would inform me, if or not he had sent down by Post the Ship-master's Receipt for the Goods contained in the Invoice in Mr. *Thomson's* Hand: He answered indeed he could not say, that any Receipt of Master or Mate had been sent down by the Post, or by the Ship; and it was an Omission he could not account, and could not conceive how it happened. And the Return I made was, I was very sorry the Neglect of a Packer or Clerk should bring them into such a Scrape.

Mr. *Thomson* had a Bottle of White-wine handed down from the Room above; each of us took a Glass or two, and parted. Done at *Elphinstone*, the 5th Day of February 1757 Years.

ELPHINSTONE.

Follows a Copy of WILLIAM CUMING's Letter to *George Thomson*.

Mr. GEO. THOMSON,

Edinb. 18th August 1753.

Sir, I have yours with Ten Pounds *Sterl.* which I have marked on the back of your Bill to Messrs. *Fountain* and *Wormwood*; is all from,
Sir, Your humble Servant,

WILL. CUMING.

Directed, To Mr. George Thomson Merchant in Falkirk.

Mary

Mary Brown Servant to Mrs. Gilmore in *Anstruther*, (a Witness adduced for the Defender) depones, That she was Servant to Mr. Brough in *Leith*, from *Whitsunday* to *Martinmas* 1753 Years, and left his Service a very few Days after *Martinmas*, but does not remember how many: and being interrogate, depones, she means *Martinmas* Old Stile: That she does not remember that her Master was confined to the House by any Distemper while she was in his Service, but that her Mistress, Mr. Brough's Mother, fell ill about the Time of the *Leith* Races, and died of that Illness in *September* thereafter: That she did not keep her Bed at the Time of *Leith* Races, nor till about eight Days before she died, tho' she was not able to do any Thing from the said Time of the *Leith* Races. And being interrogate if she remembers any Thing of a Porter's coming to her Master's House, and carrying off a Truss of Goods said Month of *August*, depones, she does not remember any Thing of it; but that she has heard her Master, since that Time, complain that he had lost a Truss of Goods, and say, that he thought that one *Crawfurd* a Porter had got it, but that *Crawfurd* denied it: Depones, That she does not remember, that she ever was employed by her Master to go down to the Cellar and give out Goods: That she has often been sent down of Errands to the Cellar, but that her Master's Sister always waited on the Cellar, and took Care of his Goods in his Absence, as he was very careful of his Cellar: And being interrogate whether her Master Mr. Brough ever enquired at her, whether a Porter had come and got a Truss out of his Cellar, about the Time of the *Leith* Races, depones That she does not remember any such Enquiry; for that her Master usually spoke to his Sister of these Matters, and not to the Deponent; and any Knowledge the Deponent got, was by hearing her Master speak to his Sister by the bye, as above: And depones, That she knows it to be true, that her Master, nor his Sister, did not come to any certain Information; at least she did not hear of any of the Trusses that was a-missing when she left their Family. Depones, That immediately upon her leaving Mr. Brough's Family, she went to her Mother's House in *Pittenweem*, where she continued one Year and a Half, and has never been in Service on this Side of the Water since, nor has spoke to Mr. Brough since the Time she left his Service as above. *Causa scientie patet.* And depones, That she does not know *John Bain* Porter at *Leith*.

James Crawfurd Porter in *Edinburgh*, aged 40 and upwards (a Witness adduced for the Defender) depones, That he knows Mr. Brough

Brough at *Leith*, and has sometimes been employed as a Porter by him: That about four Years ago, in the Harvest Time, he was challenged by him in the *Grass-market*, as having received a Truss of Goods from him, directed for *George Thomson* Merchant in *Falkirk*, which the Deponent denied; and thereupon Mr. *Brough* desired him to enquire at all the Carriers Quarters in *Edinburgh*, to endeavour to find out the said Truss, and about that Time he went to *Leith*; and there Mr. *Brough's* Sister and Maid were very hard upon him, and alledged very positively, that he had got out of their Cellar the above Truss for *George Thomson*, which the Deponent as strenuously denied, with which they at length appeared satisfied: That about three Quarters of a Year after this, the Deponent was told by Mr. *Brough*, that the above Truss was taken out of his Possession; that he heard it had been damaged on the Road to *Falkirk*; and he desired the Deponent to go through all the Houses between this and *Falkirk*, that ever harboured Man, and to endeavour to find out that Truss: That accordingly the Deponent went into all the Houses between this and the furthest End of *Falkirk*, but got no Accounts of the said Truss; and upon his Return, he told Mr. *Brough* so, and gave him a List of all the Landlords and Carriers Names in *Kirkliston*, *Linlithgow*, and *Falkirk*; and he got only three Shillings from Mr. *Brough* for his Pains: Depones, That he never saw Mr. *Brough's* Maid before he went to *Leith* as above, nor has he seen her since; nor would he know her if she were here. *Causa scientie patet, &c.*

John Falconer Ship-master in *Borrowstounness*, (a Witness adduced for the Defender) depones, That some Time in the Year 1753, he thinks in the Month of *August*, but is not very positive, upon his Arrival from *London* at *Borrowstounness*, *George Thomson* Defender came to him, and told him he expected a Truss of Goods by his Ship, as he had ordered the same to be shipped aboard of him; and upon the Deponent's informing him that he had no Truss for him, he seemed anxious, and said it would be a Loss to him that they had not come sooner to Hand, as he might be disappointed in the Sale of some Mortcloths: Depones, That afterwards the said *Thomson* informed him, that his Truss had been sent to *Leith*: That *William Brough* Factor there had received it, and sent it by some Waggoner or Carrier as Mr. *Brough* said; but, at the same Time, that he *Thomson* had not received it. Depones, That he told Mr. *Thomson*, about that Time,

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that

that two Trusses from *London*, one for a Merchant in *Kirkcaldy*, and another for a Merchant in *Aberdeen*, which had been lodged with Mr. *Brough* at *Leith*, did not come to the Merchants Hands for some time; and the Deponent's Son, as he said, got Trouble about them at *London*; but upon demanding them from Mr. *Brough*, they were immediately delivered up: That he has had Dealings with Mr. *Brough* as a Bulker or Factor, almost every Voyage that the Deponent made from *London* to *Leith*, and he never knew any Thing about him but Distinctness and Honesty: And depones, That he believes Mr. *Thomson* is also an honest Man, and thinks, that if he had received the Truss in question, he never would have denied it. *Causa scientie patet, &c.*

Duncan Aire Shipmaster in *Borrowstounness*, (a Witness adduced for the Defender) depones, That about the latter End of *July* 1753 Years, he sailed from *London* the Tide immediately after the *John* and *Margaret*, Captain *George Wilson* Commander, sailed from thence, and arrived in *Leith* about the 5th or 6th of *August*, by the same Tide that the said *John* and *Margaret* arrived there: That the Day following he sailed for and arrived at *Borrowstounness*, and the next Day thereafter the *Falkirk* Carrier came to him, enquiring for a Truss of Goods which had been shipp'd aboard of him at *London*, for *George Thomson* Merchant in *Falkirk*: That the Deponent, on Enquiry, found that he had no such Truss, and told the Carrier so. Depones, That in two or three Days thereafter, *George Thomson* Defender came to the Deponent, and seemed positive that the Deponent had his Truss, as he ordered, and always did order his Goods by the *Borrowstounness* Ships: That the Deponent then asked him, if he had the Deponent's Receipt, or his Mate's, for the Goods: That Mr. *Thomson* answered, that no Receipt had been sent him for them; that his Letter only mentioned that they had been shipp'd, without naming the Ship: That Mr. *Thomson* further said, that it was Velvets he expected, and that their Not-arrival would be a Loss to him, as he might be disappointed in the furnishing of some Mortcloths. Depones, That Captain *Falconer*, a former Witness, did not arrive at *Borrowstounness* for three Weeks after the Deponent; and the Deponent told Mr. *Thomson*, that as Mr. *Falconer* was next on the Birth at *London*, the Goods would probably come aboard of his Ship. *Causa scientie patet, &c.*

Charles Addison Merchant in *Borrowstounness*, to whom the Pursuers objected, that he was married to the Defender's Wife's Sister, to which

which it was answered, that made no Relation either of Consanguinity or Affinity, and therefore ought to be examined, which being considered by the Commissioners, they proceeded to examine the Witnesses, reserving the Consideration of the Objection to the Lords at advising, depones, That the *Hopetoun* of *Borrowstounness*, Captain *Aire* Commander, begun to unload her Cargo from *London* at *Borrowstounness* on the 8th Day of *August* 1753 Years, as appears from the Deponent's Books; and that very Day the *Falkirk* Carrier came to him from Mr. *Thomson* Defender, desiring him to get a Truss of Goods which belonged to *Thomson*, and was aboard of that Ship: And depones, That he has in his Custody a Letter from *George Thomson*, of Date the 3d. *August* said Year, bidding the Deponent forward what Goods were aboard of the *Hopetoun* for him. Depones, That the Deponent searched the *Hopetoun* himself, and found no Parcel for Mr. *Thomson*; and told the Carrier so: That a few Days after this, Mr. *Thomson* came to *Borrowstounness* himself, and seemed to be much surprised that his Goods were not in that Ship; upon which the Deponent told him, that Captain *Falconer* was expected in a few Days, and the Goods would perhaps be aboard of him; with which Mr. *Thomson* seemed satisfied: That Capt. *Falconer* begun to unload at *Borrowstounness* upon the 29th Day of said Month of *August*, as also appears from the Deponent's Books; and the Deponent also enquired at him for Mr. *Thomson's* Goods, but found none, and informed Mr. *Thomson* of the same: That some time after he saw Mr. *Thomson* again, when he *Thomson* told him, that his Goods had come by Capt. *Wilson* of *Leith*, that his Correspondents at *London* had wrote him so: That *William Brough* Factor at *Leith* had received them, and had informed Mr. *Thomson* so by a Letter; and further, that he had sent them by *Sharp's* Waggon; and another Time, he had wrote that he had sent them by *Andrew Gardiner* the Carrier; but that the said Goods never came to his, *Thomson's* Hands: That Mr. *Thomson*, at that Time, and several other Times both before and since, complained to the Deponent of the Loss it was to him in not receiving that Truss, which contained Velvets for Mortcloths. Depones, That he has been acquainted with Mr. *Thomson* these 20 Years, and has had Occasion to see him very often; and that he never knew him, during that Time, have any other Dress than Parsons Grey, or Blue and Black, when in Mourning: and being further interrogate, depones, That there are six Ships under Contract to sail between

between *Borrowstounness* and *London*, one every three Weeks from *London*, and also one every three Weeks from *Borrowstounness*, by which Means there are two at *London*, two at *Borrowstounness*, and two upon the Seas ; and this was their Method of sailing in the 1753, and until the Commencement of the present War, when they now wait Convoy. Depones, That he has known Mr. *Brough* at *Leith* above these twelve Years, and has had Dealings with him during that Space, and has remitted Goods to Mr. *Thomson* which he received from Mr. *Brough*: That for any Thing the Deponent knows, he is an honest Man, and a distinct Merchant ; but that the Deponent has heard *John Campbell* Merchant in *Leith*, with whom Mr. *Brough* served his Apprenticeship, say that Mr. *Brough* was not honest ; but the Deponent cannot say but it might be from Pique that *Campbell* said so, as Mr. *Brough* had left him, and set up Trade by himself ; and the Deponent does not know whether *Brough* left *Campbell* before or after his Time was out ; and the Deponent thinks in his own Opinion, that it was Rivalship that might make Mr. *Campbell* say as above. Depones, That *George Thomson* told him at the Time the Goods were a-missing, and when he was seeking for them at *Borrowstounness*, that he had no Receipt sent him for these Goods ; and that his Correspondents had not wrote to him the Name of the Ship by which they were sent, which Mr. *Thomson* told the Deponent, upon the Deponent's asking him, if he had any Ship-master's Receipt for the Goods. *Causa scientie patet, &c.*

† Sir *Michael Bruce* of *Stenhouse*, Bart. depones, That upon the 17th Day of *August* 1753, he came from his own House to the Shop of *George Thomson* Merchant in *Falkirk*, and took off in said Shop the several Articles of Goods contained in an Accompt and Discharge which he now produces, and that after he had taken off the several Articles contained in said Accompt, the Deponent and the said *George Thomson* went to the House of *James Wyse* Vintner in *Falkirk*, where they and the said *James Wyse* drunk several Bottles of Wine, at which Time the Deponent paid the Accompt, and got the Accompt and Discharge now produced. And depones, That it was about twelve o'Clock at Noon when he came to said Shop, and that it was three o'Clock Afternoon before they parted: Depones, that it is the Date of the Accompt and Discharge that makes him so particular as to the Day, as he has no Reason to think, but that the Date of the said Accompt and Discharge is a just and true Date: And Depones, so far as he remembers,

members, he never saw the said *George Thomson* drest in brown Cloaths, but either in blue, grey, or other dark Colours. *Causa scientiæ patet.*

David Oliphant Merchant in *Leith*, adduced for the Defender, depones, that he was married to a Daughter of the deceased *John Campbell*, who acted as a Factor in *Leith*. Depones, That *William Brough* Factor in *Leith* served his Father-in-law the said *John Campbell*, but whether in the Character of Apprentice the Deponent does not know. And being interrogate whether or not he ever had Occasion to hear his Father-in-law express himself with regard to *William Brough's* Character or Honesty while with the said *John Campbell*? depones, That he does not remember to have heard his Father-in-law speak either good or bad as to *William Brough's* Character. And depones, That *William Brough* had left Mr. *Campbell's* Service several Years before the Deponent was married to Mr. *Campbell's* Daughter. Depones, That he the Deponent deals as Factor in *Leith*. And being interrogate whether he could find out from his Books when and from whom he receives any particular Parcel of Goods, and the Time when, and the Persons to whom the said Parcels of Goods have been delivered, depones affirmative, that he could; and he exhibited his Books to the Commissioners, kept in the following Order, viz. on the first Page under the following Columns, *primo*, Dates when received; *secundo*, from whence, and by whom, *tertio*, on whose Account received; *quarto*, Marks; *quinto*, Quantity and Quality; and on the opposite Page, *primo*, Dates when delivered, *secundo*; to whom delivered; *tertio*, Bults; *quarto*, Cash paid out, *quinto*; Folio of Ledger in which the same are ingrossed; and lastly, Money received. And depones, That the above is the Method in which the Deponent has kept his Factor Books for these ten or twelve Years past. *Causa scientiæ patet, &c.*

Jean Campbell, Spouse to *David Oliphant* the preceeding Witness, adduced for the Defender, depones, That *William Brough*, now Factor in *Leith*, served her Father, *John Campbell* Factor in *Leith*, for several Years, but whether in the Character of an Apprentice, or otherways, the Deponent does not know, not being in her Father's House for some Time after Mr. *Brough* entered to her Father's Service. Depones, That she has heard her Father challenge Mr. *Brough* while in his Service for Goods that were a-missing and lost, belonging to some Merchants in *Glasgow*; and that when her Father so complained of Mr. *Brough*, she understood it as to his Honesty; but that Mr. *Brough*

excused himself, saying, that he had delivered them all faithfully to the Carriers. And further depones, That she does not know that ever her Father pursued Mr. *Brough* for any of these Goods that were lost at different Times, or that either her Father or Mr. *Brough* were made liable for them. And being interrogate whether, after Mr. *Brough* left her Father's Service, she ever heard her Father complain of any of his other Apprentices or Servants, for having lost mislaid Goods, depones, To the best of her Remembrance she did not. And being interrogate for the Pursuers, whether she ever heard Complaints made by the *Glasgow* Merchants or others against her Father, after Mr. *Brough* left his Service, depones, That she has heard such Complaints of Goods not coming regularly to Hand; that is to say, so soon as they were expected, but never that these Goods were lost. And being further interrogate for the Pursuers, depones, That she has frequently heard her Father complain of Mr. *Brough* for setting up in the same Way of Trade with him, and endeavouring to withdraw her Father's Customers from him, and that then she has heard her Father express himself in his Anger with regard to Mr. *Brough*'s Dishonesty while in his Service. And being interrogate for the Defender, whether she understood her Father's Complaints against Mr. *Brough* after leaving his Service, to be for having set up in the same Business with him, or for endeavouring to withdraw her Father's Customers from him, depones, That she understood the Complaints to be for his endeavouring to do all in his Power to withdraw her Father's Customers, but not for setting up the said Business as Factor in *Leith*. And depones, That she understands Mr. *Brough* continues the same Business as a Factor at *Leith*, and that she has no Connection with him, and that she does not know of any Thing dishonest laid to Mr. *Brough*'s Charge since the Time Mr. *Brough* left her Father's Service. *Causa scientia patet*. And further depones, That she has resided in *Leith* for these fourteen Years past. 11 JUL 62

John Bachope Smith in *Elphinstone* (a Witness adduced for the Defender) depones, That sometime in the 1753, the Deponent, as one of the Proprietors of a Mortcloth in the Parish of *Airth*, came to *George Thomson* Defender, and told him, that as their Mortcloths were bare, they must have a new one; that *Thomson* answered, that he had no Choices of Velvets at that Time, though he had some, but that he had bespoke some from *London*, and he hoped in a little Time he could supply them well, as he expected these Velvets which he had bespoke by